

2015

**The State of Utah, Respondent/Appellee, v. Shayne E. Todd,
Petitioner/Appellant**

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS FEB 13 2015

THE STATE OF UTAH,
Respondent/Appellee,

REPLY - BRIEF,

CASE NO. 20140593

SHAYNE E. TODD,
Petitioner/Appellant.

Appellant is incarcerated

APPELLANT'S REPLY BRIEF

Appeal from the District Court's denial of Mr. Todd's Rule of Civil Procedure 65(B) b. and d. Arguing the disciplinary Hearing, which took place on May 2, 2013 thus allegedly violating multiple provisions of the Utah Constitution and regulations governing prison disciplinary proceedings, SIX Judicial District Sanpete County, Judge WALLACE A. LEE, Presiding.

SHAYNE E. TODD

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Addendum(E). petitioner Todd's declaration and Exhibit Affidavit by inmate Seidric Johnson #127046 And nurse charting - observation dates 4-3-2013, 4-4-2013, & 5-2013 Declaration of hearing officer Keene Jones 2 - filed Affidavits in the trial Court 1-22-2014 and Two (1R-2) reports of officers. Id.

Addendum(F). petitioners petition original copy for Extraordinary relief URPC Rule 65(B)
 The original memorandum in support of Petitioners original petition filed Dated 9-11-2013 for Claims / Arguments raised for Extraordinary relief URPC Rule 65(B) (Trial court records) Id.

Addendum(G). UTAH Department of corrections Disciplinary Findings Form MD-2 original hearing held May 2, 2013 Id.

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IN THE UTAH COURT OF APPEALS

DENNIS SORENSEN,
Respondent / Appellee,

V.

SHAYNE E. TODD,
Petitioner / Appellant,

Page (1) of (10) pages,
(Front & Back)
CASE NO: 20140593

Appellant is incarcerated.

SUMMARY

Mr. Todd argues that the district court erred in denying his petition for Extraordinary Relief, with claims based upon Rule 65B(b) and (d), UTAH Rules of Civil Procedure. Todd's Rule 65B(b) claims for wrongful restraint of personal liberty, includes the following claims: (1). Todd was wrongfully punished for violating disciplinary rules and sentenced to punitive isolation. Todd further contends, in his original petition herein, under Rule 65B(d), claims is based on wrongful use of judicial authority or failure to comply with a duty within a disciplinary hearing. Includes the following claims: (2). Todd was denied a continuance and did in fact, indicated he was not prepared to proceed, because he had not yet been given or received his (112-2) GRAMA records request, for the complete incident report which Todd asserts, due process in a major

prison violations entitle him too in his hearing, (3) Todd realizes he does not have the right to cross-examine adverse witnesses, nor confront accusers, but if the opinion of the hearing officer, it would jeopardize the safety of other offenders or staff, security or operational goals. (For the same reason the hearing officer may determine it necessary to take some testimony outside Mr. Todd's presence). Mr. Todd asserts this request, was not granted, even though he told Captain Jones, it would not over burden the prison, because reporting officers and/or medical nurse's are personally available either in person, or by phone or E-mail for every disciplinary hearing, (4), Mr. Todd did not receive nurse Sackman's and officer Francon's incident report, even though he has a right to review the officer(s) written report, which all claim(s) herein were raised with the trial court, thus there is trial court record Todd raised the issues).

In accordance with Utah Rule of Appellate Procedure 24(c), Mr. Todd submits this reply brief "limited to answering any new matter set forth in the state's/respondent's opposing brief," UTAH R. App. P. 24(c). Therefore, this brief responds to the state's respondent's arguments that: (1), Adequate Briefing (2), Unpreserved claim(s) (3), Summary Judgment proper (4). Todd did not adequately

Brief his claims. (5) Todd did not preserve his claims, and (6) The trial court correctly granted summary judgment in favor of respondent. (7) Todd received adequate due process at his disciplinary hearing. The hearing officer's findings were supported by "some evidence."

ARGUMENT

POINT 1, MR TODD PROPERLY USED RULE 65B, IN SEEKING TO CHALLENGE THE REGULATIONS GOVERNING PRISON DISCIPLINARY PROCEEDINGS, AND THE DISCIPLINARY ACTION IMPOSED BY THE DEPARTMENT OF CORRECTIONS, AND THE SUFFICIENCY OF EVIDENCE TO SUPPORT THE CONVICTION, AND THE APPROPRIATENESS OF THE SANCTION.

Pursuant to Utah Rules of Civil Procedure Rule 65B, and (d), allows this court to correct errors and review, whether the decision of guilt was made properly, and whether Mr. Todd was fairly allowed to put on a defense. Todd contends he made a primary successful argument within his administrative appeal and petition memorandum in support of his petition for extraordinary relief, which is correct as a matter of law, because Todd asserts he was not wrongly found guilty, but that he was improperly found guilty, and he requests the reviewing court does not independently assess credibility or re-weigh

evidence, Mr. Todd further understands, Both the administrative level and court process herein is very unlikely to question the decision made by the fact finder, who saw the evidence first hand. "However Todd contends herein," he believes this court could and would be expected to review, whether the decision of guilt was made properly, and whether Todd was fairly allowed to put on a defense in this case and circumstance, especially when the prison did not follow its own pill-line regulations by providing him with one more pill than necessary for his Am docs. In fact, Todd asserts the incident was an accident, not done intentionally on his part, he pled not guilty and further contends the prison officials cannot opine or opine on Todd's motives, nurse Jackman's statement lacks foundation and is merely only supposition of dropping and diverting medication on purpose and/or Todd deliberately dropped the medication and was aware it was on the floor. Even nurse Jackman's (IK-2) report states Todd did not know, or acted like he didn't know what I was talking about, so ~~he~~^{he} again informed him that he needed to pick it up off the floor and take it, which he complied. Without incident Mr. Todd asserts this court could conclude by his actions herein, this incident is not a abuse diverting medication(s) and in either case

situation and assessments, it was fundamentally unfair, for the nurse Jackman and the reporting officer, to force Todd to take the pill that was on the floor and make him swallow it, if infact, they believed he intentionally dropped the pill to keep for a latter time, Id. Thus, the pill that was on the floor, should have been taken by nurse Jackman and/or officer Francome III. There is no dispute, Todd received advance written notice of the (B-13) charges before his hearing and the written statement from the Hearing officer of the "some evidence," relied on, But Todd takes issue with the reason for the disciplinary action. Because these noted statements are not material to a (B-13) charge, in light of Jackman's accusation, based on the facts of this incident and situation, that he personally observed Todd tip his hand to drop one of the five pills given by him... "intentionally on the floor," to keep for latter. As discussed above, there is evidence Todd was given more pills then required, and denied an opportunity to present this and/or an defense to this and present documentary evidence. Id.

Mr. Todd, further contends, to the extent that he substantively arguing, that he did not know there was a pill on the floor, nor did he intentionally drop the pill it was accidentally dropped, substantively arguing that he did not violate any prison rule infraction (B-13) because he was given more pills then required and did not purposely drop the pill to keep for a latter time.

Thus - is - not - Abuse / misuse of medication and Jackman's report regarding the April 5, 2013 incident [is not] supported by officer Francom's report. Additionally, despite officer Francom feeling Todd intentionally dropped the pill, because of nurse Jackman's statement / report [is not] Abuse / misuse of medication, because Todd ultimately took the pill, when compelled by nurse Jackman. Thus there is no sufficient evidence before the disciplinary Board to find that Todd intentionally dropped a pill to keep for a latter time. According to policy, Todd ultimately swallowed all his pills and he was required per - "UCO" policy. Especially when there is a distinct possibility that the medication could have likely fall from Todd's hand at no fault of his own, when bring his hand back in from outside a smug cuff port. Id

Todd further contends, by his own - omission's, he has shown that he had done "all that's required of him", because he was not aware at any time of an extra pill medication as he placed (four - pills) in his mouth as required of him, according to his AM - does until Jackman said "derogatorially", Pick up the pill you dropped. It's clear showing Todd's only to receive (2) neurotin (1), ultram, and (1), weubutrin medications a total of (4 - pills) Id Therefore this court could find there is a genuine issue of material fact, and a trial court erred in determine the issues / facts, that were necessary in this case and circumstance for a not guilty finding.

Finally, This court could conclude, do to the facts, Todd was provided more medication outside his regular dose, for a clear showing of pill-line defisitancy, in nurse Jackman's Job "obligation and he infact, made a mistake on his own part," which takes away the burden from Todd, because now its his burden to show prejudice; Thus there can be little doubt that there is any guilt on Todd's part for Abuse / misuse of his medication, under the stated issues / circumstances, Id.

These claims and / factual assertions, could have been assessed by the court and through Mr. Todd's administrative process, still the respondents were granted summary judgment and denial of his response and memorandum in support of his response to respondents motion for summary judgment, that comply with Utah Rule of Civil Procedure 70(c)(3) 3. See attached heren Addendum (A), and (B).

The respondent's argues, though their reply even though its possible for medication to fall accidentally nurse Jackman's written statement - excludes that possibility even though Mr. Todd contends this is what "actually happened", and its clear that the possibility is clear, that medication could have clearly fallen accidentally, and to only accept Nurse Jackman's statement, excluding Todd's

statement, and explanation of this clear possibility shows prejudice, because of nurse Jackson's "Job position that's above Mr. Todd's. (Plus) officer Francom did not know that Jackson gave Mr. Todd more pills - that - morning outside his regular dose, when he testified that Todd was given (Five pills) and he seen (four-pills) in his mouth and swallowed them, Id.

Respondent, asserts, Todd did not ask for a continuance at his disciplinary hearing and/or otherwise indicate, he was unable to proceed. Second, respondents, assert, that Captain Jones had no-obligation to look into Mr. Todd's claims, even if he had asked him for such a continuance. Thus Mr. Todd asserts, this is disputed. The phrase "due process of law" is found in both the Fifth and Fourteenth Amendments to the United States Constitution. The Fourteenth Amendment applies to the states. The supreme court indicates that "due process" has two aspects: substantive and procedural. The substantive aspect of "due process" involves the fundamental right of an individual such as life and liberty, which are protected from government action. The procedural aspect of "due process" deals with the means by which a government action can affect the fundamental rights of an individual like in Mr. Todd's case.

only after certain "fair procedures" are followed can the government act to deprive an individual of a fundamental right, i. e.,

Mr. Todd contends, because it's clear that there is no-guilt on his part for some-evidence for Abuse/misuse of medication, under the stated facts and circumstances, within this case, Todd was punished harshly and unconstitutionally violating his rights, and clear showing of abuse of discretion by ("DOC") and their respondents.

There is further supporting evidentiary - support that a continuance was denied and Todd was denied to present documentary evidence in his defense? (Plus) Todd asserts / contends, that he did not receive nurse Jackman's and officer Francon's written reports (IP-2), which he has a right to review the officer(s) incident reports, which Captain Jones reviewed. In reaching his decision, Todd showed Both prison officers in this case and incident pills in his mouth, and swallowed them, including the pill, he was forced to take outside of his current prescription and the officer was not forced to come inside Todd's cell and find the pill dropped on the floor in respondents dogged pursuit and derelict act, to ensure that Todd was not stockpiling medicine. In reaching correctional goals and that of

Prison policy, neither Francom ~~at~~ or Jackson testified in person, or talked to by phone or outside of Todd's presence, or even by an E-mail. Looking into these questions, instead their written (12-2) statements were considered by Captain Jones, I.d.

Mr. Todd asserts that he "notified Jackson and Francom that he had received an extra pill or that he attempted to return the ~~pill~~ pill and was told to swallow it after reaching down picking it up," I.d.

Mr. Todd to bring matters to an end, further asserts / contends, these respondents actions show malice and abused their Authority, and there ~~was~~ were not professional conduct, by these prison officers. Policy is said to be the standard to which is being followed "However" at all times and / or any - time - policy goes against the constitutional law, it renders itself inadequate and without merit. Furthermore Todd contends policy and procedure of the prison are a stated discretion function and can be challenged, under the Abuse of discretion standard on Appeal.

The Supreme Court recognized that a prison disciplinary hearing is an effort at "an orderly

attempt to arrive at the truth". It is not a formal court proceeding. A disciplinary hearing combines two functions in the proceeding: the fact finding process and the correctional process. Todd asserts that the fact-finding process involves a determination of the truth of the allegation that a specified institutional rule had been violated, that is, did Mr. Todd violate the rule? Also Mr. Todd contends (related to the due process requirement, that he must be notified of the charges against him, and he must have been notified of the existence of specific rules prior to the charge of violating them; The policy behind prison rules is to prohibit observable behavior that can be shown clearly to have a direct, adverse effect on an inmate or on good order in the institution.

Repeating the argument it made in his administrative Appeal, "disciplinary Appeal" and within the trial court in Todd's response and memorandum in support of his response to the respondent's motion for summary judgment. The ("UDC") Disciplinary MD-1 Form class major Explain charges (B-13) Abuse/misuse med's states: An inmate was caught dropping his retained med. To keep for a later time Last update 4/6/2013. Todd contends by putting him on notice of rules (including broad ones like "obey officers") the prison attempts to lay out what it expects, so it can hold him accountable for violations. Instructions for offenders charged with major disciplinary offenses

see Addendum (C). Line Two - major violations entitle Todd to due process hearings; under Line 2-(d). states for the same reason, the Hearing officer may determine it necessary to take some testimony outside his presence. Thus Mr. Todd asserts prior to the case of Wolff v. McDonnell, 418 U.S. 539, 94 S.Ct. 2763 (1974) was the most important case for outlining what the supreme court said was required for prison disciplinary hearings. Todd contends, in disciplinary hearings are entitled to disclosure of the details concerning the charges against them: The (B-13) charge accused Mr. Todd of committing disciplinary infraction while incarcerated. Todd argued for specific protections at the hearing and on his administrative appeal and he in fact, did provide clarity to any vague portions of his prison disciplinary policy. He stated that he had an unwarranted (B-13) disciplinary, because the noted explained charges, does not fit the language violation or the incident that occurred; OR THE ELEMENTS"

B-13 Abuse or misuse of medication,

Elements: An offender may be charged with this offense, if the offender had in their possession, cell or property, any prescribed medication in unauthorized amounts, removed any prescribed medication from the package for reason other than prescribed use, failed to take medication as

Prescribed or failed to turn in unused Prescribed medication when required, Mr. Todd Argues the ("UCD") can't have it (Both ways;) see attached Addendum(D.) Todd contends the rule or the regulation, which can result in disciplinary proceedings must apprise the inmate like Mr. Todd, of the proscribed conduct. The usual rule is that a statute or regulation must "give a person of ordinary intelligence (fair notice), that their contemplated conduct is forbidden. Todd asserts the said stated underlying principle is that no-man should be held responsible for conduct, which he could not reasonably understand to be proscribed see United States v. Harris, 347 U.S. 612, 617, 74 S.Ct. 808, 812, 92 LEd. 939 (1954); The undisputed facts, speak for themselves and are the best evidence of their contents hereby. The incident was an accident on Todd's part and a systematic displacement of retained medication on ("UCD's") med techs and was personal, when they violate their own rules and policy and not following the ("UCD") Doctors orders, United States v. Harris does's. Id.

As such, "case law determinations requiring challenges to the ("UCD") function be made through extraordinary writs, which apply "under these circumstances, i.e.,

POINT(2) MR. TODD'S ARGUMENT THAT THE HEARING OFFICER REFUSED TO ALLOW HIM A CONTINUANCE AT THIS HEARING, TO /AND REVIEW OR PRESENT DOCUMENTARY EVIDENCE IN HIS DEFENSE.

Mr. Todd's argument that the ("JDC") violated his due process rights under UTAH constitution, article I, section 2, by providing him with more pills than necessary, then sectioning him, after he did what was required of him, under the constitution of the United States, a state agency is required to give persons due process of law before depriving them of life, liberty, or property. Inress, 2001, UT App 307 P12, 87 P.32 1166. Also the procedural rights a person is entitled under the due process clause depends on the circumstances. Labrum v. Utah State Bd of Pard. 870 P.2d 902, 911 (UTAH 1993).

Mr. Todd contends herein, that the trial court missed the mark under Wislipole v. Hill, 472 U.S. 445, 454-455 (1985) because the trial court was convinced there was some-evidence "the officer's report and (1R-2) statement's supporting Captain Jones decision," Thus Todd asserts he was not allowed to present documentary evidence or review evidence in his defense which would have brought forth a considerable different outcome "Jones did."

Todd contends, he did not receive the written statements, that Captain Jones reviewed. He further asserts Captain Jones' written report "does not describe the evidence relied upon, though the report MD-2 findings of guilt was only - based on the officer's report... see page 13 of ~~Todd's~~ brief R. 9 at 165. Captain Jones considered Todd's account, as well as his witnesses' accounts, that Todd told Francum and Jackman that he had not intentionally dropped the pill to keep for a latter time, which Todd asserts this cannot be true because he disputes the accounts of officer and the nurse herein. They believed Todd intentionally dropped the pill and Todd further asserts their going to sign with their own, because of their job position that's above Todd's. (no-doubt) Captain Jones simply found Francum and Jackman's accounts more credible even though Mr. Todd was aware that if he did not request the presence of reporting officer, the disciplinary officer Captain Jones is allowed to take their written statements as True, without the benefit of Todd questioning them. As the presence of the reporting officer is likely to be an essential part of his defense, The trial court denied Mr. Todd's petition Id. because Mr. Todd raised no-genuine issues of material and a trial to determine the facts is not necessary its a petition for Extraordinary relief.

even though Mr. Todd raised the state due process argument as stated above, it is preserved. Should this court determine that Mr. Todd's rule 65B petition was procedurally correct, this court can reach the issue. The "preservation requirement is self-imposed and is therefore one of prudence rather than jurisdiction." Patterson v. Patterson, 2011 UT 68 P.3d 266 p.32828. This court has "wide discretion" to entertain or reject matters "based on the preservation rule Id. But the preservation requirement is not a weapon for the appellee. Rather, it is a discretionary rule created to promote judicial economy and fairness Id. pp 15-16. "In order to preserve an issue for appeal, the issue must be presented to the [district] court in such a way that the [district] court has an opportunity to rule on that issue" In re Baby Girl T, 2012 UT 78 P.3d 39-42 (quotations and citation omitted) see attached Todd's declaration and Captain Sauer's declaration(s) herein AS a addendum (E). An issue is preserved for appeal when the party has "(1) raised the issue 'in a timely fashion' in the lower court, (2) 'specifically raised' the issue, or (3), introduced 'supporting evidence or relevant [legal] authority.'" Id. (citation omitted). An issue is considered sufficiently raised, even if it is done indirectly, when it has been "raised to a level of consciousness such that the trial judge

can consider it. "Id. (quotations and citation omitted). The preservation rule "serves two important policies, - judicial economy and fairness State v. Holgate, 2000 VT 74, 16 Vt. 3d 346. Judicial economy suggests that "the trial court ought to be given an opportunity to address a claimed error and, if appropriate, correct it. "Id. (citation omitted). "The policy of judicial economy is most directly frustrated when an Appellant asserts unpreserved claims that require factual predicates. For this reason, the preservation rule should be more strictly applied when the asserted new issues or theory depends on controverted factual questions whose relevance there to was not made to appear at trial. "Patterson, 2011 VT 15 (citation omitted). "The second consideration is fairness. "Id. ¶ 16. "It is generally would be unfair to reverse a district court for a reason presented first on Appeal. "Id. State v. Bujon, 2006 VT App 322 ¶¶ 21-22, 142 P.3d 581 (issues preserved where "both of the policies articulated in Holgate "were satisfied, aff'd 2008 VT 47. Mr. Todd's state and federal due process argument meets the preservation requirements where he timely raised the issue in support of his rule 65B1 petition to correct his disciplinary conviction see addendum (F). The issue was "specifically raised" in (Both) his memoranda in support of his petition and reply response

and memorandum in support of his response to respondent's motion for summary judgment. Mr. Todd's state and federal due process argument's was raised "to a level of consciousness such that" had the trial court agreed that the rule 65(B) and 61 could be used to review ("UDC's") claim for wrongful use of judicial authority and denied due-process of law in his disciplinary hearing. The court could have considered it see In re Baby Girl T. 2012 UT 78 P 34. Furthermore, (Both) of Mr Todd's state due process argument was preserved, because his rule 65(B) and Appeal "brief was infused with due process implication arguments, and cases. In re Baby Girl T. 2012 UT 78 P 36 ("whether a party has properly preserved an argument, cannot turn on the use of magic words or phrases.") see also Edleman v. McKee, 2004-20830, 2005 WL 5416768, at *3 n.2 (E.D. Mich. Mar. 22, 2005) (The preservation of the claim of a constitutional violation should not hinge upon insistence of certain "magic words," but should, instead, rely upon the common judicial sense of those charged with enforcing the basic rights it affords."), aff'd 471 F.3d 576 (6th Cir. 2006) overruled on other grounds by Fry v. Rile, 551 U.S. 112 (2007).

POINT(3). MR. TODD'S PROSE ARGUMENTS OUTLINED

IN THE OPENING BRIEF WERE ADEQUATELY BRIEFED, AND SHOULD BE ADDRESSED BY THIS COURT.

The state respondent's claim that, this court should not address Todd's prose arguments, because they are inadequately briefed and incomprehensible "should be disregarded, where Todd has developed his case arguments, based on state and federal case law, cited throughout his arguments. In addition the respondent's claim(s) should be disregarded as being without merit, where its own Arguments is itself, inadequately briefed, because Todd's brief is (Both) not procedurally and substantively inadequate. Todd further contends, he has not failed to show how the court's conclusion is error. The trial court's decision should be reversed, because of the "undue" fundamental unfairness with in this case / incident, see Appelle brief 9, Todd followed the court's clerk prose filing check list within filing this Appellate brief, under UTAH Rule of Appellate Procedure 24(a)(7). 24(a)(9). UTAH R. App. P. 24(a)(5) B. Whether to deem an issue inadequately briefed is a discretionary matter for the Appellate court's, see UTAH R. App. P. 24(k). State v. Gambin, 2000 UT 44 P18. 1P 3d 1108. This court may deem an issue inadequately briefed, if the argument contains "no-citations to authority to support [the] claim" or "merely contains "bold citations to authority [without] development of

that authority, and reasoned analysis based on that authority. State v. Timmerman, 2009 UT 58 ¶ 25 n.5 218 P.3d 590 (quoting Smith v. Fourcorners mental health Inc., 2003 UT 23 ¶ 46, 70 P.3d 904) see UTAH R. APP. P. 24(G) (9). In other words, this court may declare an issue inadequately briefed, when the "overall analysis of the issue is, so lacking as to shift the burden of research and argument to the reviewing court, State v. Thomas, 961 P.2d 299, 305 (UT 1993). This court should address the merits of Todd's prose arguments, because it is adequately briefed. The - structure of arguments, is left to Appellant, so long as "the contentions and reasons of the Appellant with respect to the issue presented, including the grounds for reviewing any issue not preserved in the trial court, are supported by citations to the authorities, statute, and part of the record relied on, UTAH R. APP. P. 24(G)(9), and UTAH R. APP. P. 24(K). Todd presented to this court and the trial court, these authority governed to his claim(s). UTAH Appellate Rule 24(G)(7), "supported by citations to the record attached addendum(s) to this reply-brief (A, through H.) here!" Id

CONCLUSION

As more fully set forth in the opening Brief, Appellant Todd prose, respectfully request that this court reverse the trial court's denial of his petition rule 65(B) and reverse the disciplinary guilty finding and the respondents motion for summary judgment.

CERTIFICATE OF MAILING
Proof of Service

I hereby certify that I mailed a true and correct copy of the foregoing reply - Brief of petitioner Appellant, postage prepaid to below address this 5 day of February 2015,
 Amanda M. Montague (9941)
 Assistant Attorney General
 160 East 300 South Fifth floor
 P.O. Box 140812
 S.C.C. UT 84114

Shayne Todd
 SHAYNE TODD
 Attorney pro se,

CERTIFICATE OF COMPLIANCE
Prose Litigant

In compliance with the hand written volum and/or UTAH R. App. 24(F)(1), I certify that this reply - brief contains 3,509 words, excluding the table of contents table of authorities, addenda, and certificate of compliance and delivery. In compliance with hand written prose requirements UTAH R. App. P. 24(C).

Date this 5th day of February 2015

Addendum (A).

Filed by Petitioner/Appellant
on Date MAY 16, 2013

Mr. Todd challenged the disciplinary findings, as he asserts he was improperly found guilty and ("UDC") imposed an - inappropriate sanction for a rule he did not commit.

CH 305T

12013

UTAH STATE PRISON DISCIPLINARY APPEAL FORM

LAST NAME TODD	FIRST SHAYNE	MIDDLE E.	USP # 19529 OFFENDER# 52731	UNIT Hickay CELL 305
INCIDENT CASE # 272950	DISCIPLINE CASE # 676712	HEARING DATE 5-2-2013	APPEAL DATE 5-16-2013	

I REQUEST AN APPEAL REVIEW OF MY DISCIPLINARY HEARING FOR THE FOLLOWING REASON(S):

☒ THE DISCIPLINARY PROCEDURES WERE NOT PROPERLY FOLLOWED. **Department of Corrections**

☒ THERE WAS NOT SOME EVIDENCE TO SUPPORT THE DHO'S FINDINGS.

RECEIVED
MAY 21 2013
Hearing Office

☐ THE DISCIPLINARY SANCTIONS WERE ARBITRARY, CAPRICIOUS, UNREASONABLY HARSH OR UNREASONABLY LIGHT.

FOR EACH BOX CHECKED ABOVE, PROVIDE SPECIFIC DETAIL.

(PAGE 11 OF 5)

I was improperly found guilty, I DHO imposed an inappropriate sanction (B13-Charge) according to the severity level of the prohibited act.

I'd like to provide clarity to the vague portions of this (B13-Charge) Abuse/misuse of medication. Explained Charges are an error which states: An inmate was caught dropping his retained med. To keep for a later time. Last update 4/6/2013. This is not true nor correct herein. I was prejudice by this incident.

NOTE: I've an unwarranted (B13) Disciplinary. The noted Explained Charges, does not fit the violation or incident that occurred. The rule or regulation which can result in disciplinary proceedings must apprise inmates of the proscribed conduct. The usual rule is that a statute or regulation must "give a person of ordinary intelligence (fair notice) that his contemplated conduct is forbidden. The said underlying principle is that no man should

SIGNATURE

WH/E20

Shayne E. Todd

DATE 5-16-2013

03/07

be held responsible for conduct which he could not reasonably understand to be proscribed. See United States v. Harris, 347 U.S. 612, 617 74 S. Ct 808, 812 92 L Ed. 989 (1954);

This incident is an accident and was not done intentionally, nor was it any fault of my own doing. This is a medical problem, not a housing (B13 incident). The undisputed facts show that it's an issue and known incident of systematic displacement of retained medications by the med techs personally, when they violate their own rules and policy, by not popping out pills into a clear cup from the blister packs before placing them into the inmates hand through a cell door cup port; appropriately.

I receive several tablets 2x each pill-line morning & evening the past 3-years, a total of (ten tablets) daily, which are all highly strong and retained meds. Now rather than be a problemmatic interest of lesser significance to IDHU and the medical and housing unit, it has greatly effected me. The way the said known med tech put my five retained meds into my hand that morning, not properly popping them out into a clear pill cup several tablets out of three separate retained blister packs of medications.

This is not true or correct, because I am not going to drop only one pill and not all of them for a later time, (plus) This would be impossible for me to disstinctively pick and choose which tablet to dropping out of (five retained tablets), if this were true & correct herein,

STANDARD OF PROOF

The standard of proof is only that "some evidence" must be shown for each charge; I realize this is very low standard herein. But this incident and disciplinary infraction is very serious and this guilty finding can be used to justify keeping me in Hickory Building which is a higher security or can be used as evidence of bad behavior to deny me parole. "something" I'm not guilty of doing. Under the "some evidence" standard over the officers report herein.

I was improperly found guilty by the "some evidence standard" because the officers report by (Bruce Francom III) who expressed the charges and reported this incident didn't witness no abuse/misuse of medication, by the way the med tech placed the five ~~meds~~ into my hand that morning when he alleged I dropped one tablet for a later time.

see Wolff v. McDonnell, 418 U.S. 539 (1974);
Due process requires the hearing officer to
produce a written statement of findings
and include the evidence relied upon for
that finding;

The record evidence shows I accidentally
dropped one tablet out of five tablets placed
in my hand by the med tech. This was not
intentional for Abuse / misuse of medication,
and was no-fault of my own doing. The
officer and med tech knows these facts.
I've two witnesses wanted IDHO to call
for witnesses, and I provided him
with two documentary affidavits evidence
in my defense concerning these facts,

The (B13 Charge) does not Abuse / misuse
of medication for accidentally dropping one
tablet out of five retained meds herein
for a later time is not the "same" as a
report for checking based on suspected
"checking pill-tablets for a later time
etc." It was only the med tech who
seen or witnessed this incident, when I
pulled my hand back through the cup port
which then he seen one sleep out the side of
my hand and one tablet fell on the floor.
I didn't see it or know the tablet had
slept out of my hand at that point.

NOTE: It was not until after I
put the tablets into my mouth and
shaved (Both) the officer & med tech

that I had intact" put the medication into my mouth, Drank Water and Swallowed them. I had swallowed the medication that the med tech told me to now pick up the one pill-tablet that had fallen on the floor. He told me the said Crown med tech told me to now pick it up and take it and swallow it... Thus is what I did,

I was not hiding it nor by doing this I was not misusing it. I told them it was an accident and I was sorry!!! It wasn't happen again, I would be more careful in the ~~future~~ future. I didn't know that I could be charged for this rule for Dropping a pill through my cup port. Especially when I picked it up took it and swallowed it in the first place. (After accidently dropping it.)

According to retained med's policy, The med tech's are to observe inmates swallow their pills when administered during pill-line. "IF the inmate refuses to swallow the medication" The said med tech is required to report this information to the medical physician. Wherefore according to policy, I didn't refuse or misuse my retained medication here-in do to this incident & disciplinary charges. Due process requires an impartial Disciplinary Board which I'm requesting.

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing was mailed, ~~postage pre-~~
~~paid, to the Attorney General's Office, at 160 East 300 South, P.O. Box 140856, Salt Lake City,~~
~~Utah 84114-0856,~~ on this 16 day of May, 2013

S
D

Shayle E. Vanden
Signature of Petitioner

Suzanne Young
Program Manager
Disciplinary Appeals
Administrative Services

Addendum (B).

According to petitioner / Appellant
Court Filing Docketing Statement
Dates... February 5, February 20, 2014

Mr. Todd is prose he contends he has complied
with the UTAH Rules of Appellate Procedure.

UTAH Appellate Rule 24(a)(7) Requires petitioner
to provide a statement of facts "supported by
citation to the record" and pursuant to Rule
24(a)(9), the argument must cite the parts of the
record relied on, and cites to the trial court
records.

Mr. Todd's Brief is sufficient to allow this
Court to review his claims herein. Id.

Shayne Todd #52731
Gunnison/CUCF
Prose.

APPELLATE COURTS
POSTMARKED

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A Brown

IN THE SIXTH JUDICIAL DISTRICT COURT
FOR SANPETE COUNTY, STATE OF UTAH

SHAYNE TODD,
Petitioner,

v.

DENNIS SORENSEN,
Respondent.

PETITIONER'S RESPONSE AND
MEMORANDUM IN SUPPORT
OF HIS RESPONSE TO
RESPONDENT'S MOTION FOR
SUMMARY JUDGMENT
NOTED 23.2.14 JANUARY
CASE NO. 130600055.

Petitioner's Response to Respondent's
motion for summary judgment.

Petitioner SHAYNE TODD, Prose., respectfully
submits this response and memorandum in
support of his response to the respondent's
motion for summary judgment. Because the
Respondents have failed to meet their
burden of demonstrating that there is no
dispute as to any material fact, and because
of the facts set forth in petitioner's statement
of material facts and the attached evidence
show that Respondents violated here clearly
established constitutional rights. This court
should deny Respondents motion.

INTRODUCTION

Petitioner an inmate at the central UTAH
correctional facility ("Prison Gunnison") brought
his Petition pursuant to UTAH Rule of Civil

Rules Civ. Proc. Rule 65B, UT R. RCP Rule 65B
current with Amendments received through
(9/1/2013)

2.

Procedure 65 B(b) and (d). He challenges Both Rules of civil Procedure under 65 B(b) claims are based on wrongful restraints on persons' liberty (including conditions of confinement), also Rules under 65 B(d) claims are based on a Disciplinary Hearing, which took place on May 2, 2013. Where he contends that he was improperly found guilty and disciplined for committing a disciplinary infraction while incarcerated, petitioner Todd further contends, that the hearing officer - refused to allow him to call the reporting officer and nurse medical - Technician at his Hearing. on administrative Appeal, he challenged the sufficiency of the evidence to support the conviction or the appropriateness of the sanction imposed by the Department of Corrections.

PETITIONER'S STATEMENT OF MATERIAL FACTS

- (1). on February 13, 2013, Petitioner was Transferred from the UTAH state prison to the Central UTAH Correctional facility ("Prison - Gunnison").
- (2). petitioner, has serious medical conditions that require, Both medical treatment and medications, while housed and incarcerated at C.U.C.F.,
- (3). Dr. Bruce O. Burnham is employed by the UTAH Department of Corrections DOC as a full-time physician at the Central UTAH Correctional facility ("Prison - Gunnison").

(4). Dr. Burnham is personally acquainted with Todd, and has treated and or, otherwise has "diagnosed" Todd on several occasions at C.U.C.F. Id.

(5). When petitioner was far-months old he was hospitalized and treated for meningitis. He has been diagnosed many-times with what they call it, Dementia or borderline mental Retardation and for no reasons of his own he had meningitis and he was in a coma when he was a small child. All these noted evaluators found that, and that also it has caused him a number of other issues with Todd's case. He has (A.D.H.D.) which affects his body and brain functioning. see Diagnosed Reports at (page 5 and 6) Attached herein at (Exhibit 1.)

(6). As a result of petitioners medical history he suffers from sever back pain, hip pain and nerve damage issues, that caused by what is known as perthes disease, resulting in a degenerative hip condition. Id.

(7). Petitioner was prescribed Ultram and Neurontin to treat these long-term medical conditions. In addition, petitioner has these mental health issues, suffers from (A.D.H.D.) and depression, within his mental health conditions, so he was prescribed Wellbutrin for this condition. see attached herein at (Exhibit 2.)

(8). At the time of the allegations alleged in the petitioner's petition, requesting such noted said relief herein. Bruce Francom III and nurse medical technician, Jasa Jackman, was assigned to the C.U.C.F. Prison infirmary, were both persons officer Francom and nurse Jackman duties included giving Todd and other inmates their medication, when doing pill-line, i.e. providing pills to inmates in their cell door cuff ports, which both officer and nurse know the petitioner Todd in this case and the types of medication he receives, and should know the amount of pill does he takes, at each pill-line and pills provided by the C.U.C.F. doctor for his AM and PM doses which are both times different and not the same pills amount or does in this case, but in either case petitioner is not to receive more pills than for at a time each pill-line, i.e., 1d.

(9). on or about April 3, 2013, while nurse Jackman was distributing petitioners medication, he dropped a pill on the floor and rather than picking it up and giving it to Todd nurse Jackman popped another pill-out-of-Todd's pill blister pack and gave it to him then nurse Jackman picked up the dropped pill off the floor and placed it on the pill cart without incident see Declaration of Todd's Attached herein at (Exhibit 3),

(10). petitioner Todd then also asked nurse Jackman

the staff have dropped on the floor, Todd respectfully wanted to know what medical department did with the pills dropped on the floor out of his pill-blister packs, Id.

(11). petitioner Todd explained to nurse Jackman that his concern was that his blister packs of pills out of the three-blister pack types of his critical medications have been short several-times resulting in him not getting his need does medication, until another new blister package prescription is ordered. Todd also had other questions and noted concerns about these issues and noted matters, as explained in petitioners Declaration attached herein. Id.

(12). nurse Jackman stated and told Todd not to worry about it and his pills were not stamped as critical meds and if petitioner Todd, had to go without his medications for a few days, it was not going to kill him, nor was it life threatening and Jackman told Todd to stop complaining about it i.e., Todd had no right to his medication's. Jackman then threatened petitioner Todd, that he would in fact, contact the provider of CPC / C.U.C.F. Tell them, Todd had a addictive personality and has been demanding his pills. ultram which is a neuropathic pain reliever. Id.

(13). on April 4, 2013, while Jackman was again distributing Todd's medication he asked him

if he had any issues, or if Todd still felt as if he had a right to his pain medication and still going to continue - demanding his pills. If Shorter & Todd didn't argue or even demand nor complain just said no. Todd took and swallowed all his medication this day. Then Jackman walked away then accused petitioner of dropping his pain pills because he thought he had heard something hit the cell floor. Id.

(14) Petitioner Todd contends that nurse Jackman accusations against Todd is an attempt to dissuade him from pursuing an action for the nurse staff at C.U.M.F. dropping medication on the unit floor and is not noted nor replaced out of petitioner's blister pill-packs, before Todd has taken the full amount in the pill packs, then going a few days without his pills before provider re-ordering them. Todd also contends such medications i.e. should be marked critical medications, so he is not Shorter any time nor have to go days without his medication herein. Id.

STATEMENT OF UNDISPUTED FACTS

(15) This court herein records, show the court directed the Respondents to file and serve an answer in accordance with Rule 5, of the Rules Governing Section Rule 65 B (b) and (d) Utah Rules of Civil Procedure 56 (b).

On April 5, 2013, nurse Jackman accused the petitioner of dropping and diverting his meds on purpos. Jackman reported this to the unit officer during pill-line, that Jackman thought he heard something hit the floor, after he gave Todd (Five - pills) Then he only seen (Four - pills) in Todd's mouth, which is all that's required here of Mr. Todd as per-provider orders at CUCM, medical records. Thus, petitioner Todd contends this incident was a miss judgment and calculation on nurse Jackmans part, because he gave Todd too many pills that morning. (Four - pills only) records show for Todd's AM pill - does is (1) ultram, (2) neuroton and (1) wellbutrin tablets) per AM pill-line. see incident report as document Long medical on-Track Jackmans statements to providers at CUCM, attached herein as (Exhibit 4).

(16). Todd contends here, at no-time should he ever receive more pills per pill-line-does AM or PM more than just four-pills at a time, i.e. As noted above for his AM pill line does is (1) ultram (2) neuroton and (1) wellbutrin tablets only. For PM pill line does he is given (2) ultram (2) neuroton and no wellbutrin tablets. Total of (four pills). Petitioner Todd asserts such facts herein are dispute for a (genuine issue in this case) to deny Respondents Summary Judgment motion and good cause showing of nurse Jackmans credibility, abuse of discretion and also

a cause for dereliction of duty by Jackman's actions and accusations in this case i.e. petitioner Todd is seeking to redress the inadequacies in the provision of medical pill-line and mental health care at the C.I.C.F. Prison/Garrison, Id.

(17). Todd contends Both prison officials in this case (admit) in the incident report by Frencorn and Jackman (both) saw Todd place Far pills in his mouth and both observed Todd only had (Far-pills) in his mouth. Id.

(18). After Todd swallowed these (far-pills) then did Jackman demanded Todd to pick-up the fifth remaining pill and take it. Id.

(19). Todd contends that the remaining dropped pill on the floor was caused by Jackman's own doing and neglect not Petitioners in this case incident report. Todd did not see hear or even know the Fifth pill had fallen or dropped out of his hand and on to the floor herein this case i.e. petitioner Todd took far pills into his mouth which is all that's required here of him and according to his medical O-Track records Am pill-line does and tablets Amount of each pill. Id.

(20). on April 5, 2013 The undisputed fact is Jackman made a mistake and error at pill-line and caused bad Judgment by popping out (2) ultras not (1) ultra out of Todd's

blister pack and not reading the amount correctly to only give Todd (1) Ultram tablet this morning incident under Amp pill like does by provider C.U.C.F. medical o-Track records and tablet mandates. Id.

(21). Todd contends as stated (clearly by Jackman's) incident report dated on April 5, 2013, even stated that petitioner Todd didn't even know what nurse Jackman was talking about because Todd had just took his (four pills) that were given to him, when Jackman informed Todd that he needed to now pick the fifth pill up off the floor and take it. Id.

(22). The officers incident report in this case 12-2 stated petitioner Todd was given (two over 1) yellow pills (two over 1) white pills and also one (1 round) white pill... (Total of Five pills). The officers report claims Todd took the four pills and seen (two yellow pills) (two over 1 white pills) He stated Todd swallowed them, showed us his mouth and all pills were gone. Then Jackman told Todd "now pick the pill off the floor that you dropped on the ground and take it. Todd picked it up off the ground put it in his mouth and took it. Id.

(23). Todd contends he complied to officer's orders though unclear, under the circumstances looked for the pill on the floor, he seen a pill at the bottom of his cell door the

* Threshold and Todd further contends this pill was not inside his cell, but at the bottom of his cell door, placed approximately the middle of his cell door that's about $\frac{1}{2}$ way inside his cell and $\frac{1}{2}$ way outside his cell period, Id.

(24). petitioner contends this shows (malice) and (Abuse of discretion) and is not professional official conduct herein, by these prison officials in this case incident Id.

(25). Todd further contends such actions by prison officials were unreasonable harsh in this case incident, because whether they thought Todd intentionally or accidentally dropped the fifth remaining pill on the floor the pill should have been taken by Jackson and or replaced with a new pill that had not been on the cell floor. Since both officers in this case (admit) they saw and gave Todd (Five-pills) and one had been dropped. Instead was forced to take the pill and swallow it, which he complied. Id.

(26). Todd contends such actions were unreasonable in this case incident, as a result of still discontinuing all his current time prescribed medications in this case by the C.U.C.F. providers for Abuse and diversion. Id.

(27). Todd contends these actions are a case of Double Jeopardy issues, for this court

to conclude such a case as to the due process clause applies and Todd has in fact have suffered a wrongful restraint on his personal liberty, because of the prison officers unreasonable harsh actions. Id.

(28). Todd contends that he did not Abuse or misuse a pill-substance pursuant to policy and I D H's Disciplinary Charge B13, because he took the pill and swallowed it and the pill that fallen on the floor he was not hiding it or trying to divert it like the medication incident report stated. Id.

Todd contends what kind of Disciplinary he recieved as a result of the Hearing.
(29). officers findings, based on the officers report i.e. petitioner Todd further contends he did not receive a adequate explanation of the hearing officers findings and why neither officer Francom or Jackman not called to testified in person at Todd's Hearing held May 2, 2013. Instead their written statements / reports were still considered by the Hearing officers Id.

(30). Todd contends that the Disciplinary procedures were not properly followed in this case incident, petitioner Todd asked Capt. Jones at his Hearing which was denied to have both the reporting officer and Jackman at his hearing. Id.

(31). Todd's procedural rights he is entitled too in the prison - context of Disciplinary hearing and the opportunity to call two witnesses and present documentary evidence in his defense because of the officers report, a written statement by the fact finder of the evidence relied on and the reason for the sanction Disciplinary action in this case incident and such known circumstances prejudice Mr. Todd allowing the supporting and supported at least (some evidence) in the record. Id.

(32). The Hearing officer's decision was upheld on administrative Appeal on the grounds that Todd's case and stated disciplinary procedures were properly followed and the decision was supported by some evidence the reporting officer statement. Id.

(33). Todd contends he did not receive Due process at his original Hearing, nor on his known administrative Appeal. (Fact is) The officers failure to interview or allow Todd to call staff reporting statements and known officers in this case as a witnesses at his hearing such circumstances in this case Todd had the right to due process that gives him the right to call the reporting officer to testified in person. Instead of his written statement to be considered at his I.O.H.O Hearing Id.

Todd contends due to the said stated (34), circumstances in this case incident & all facts considered and all claims stated herein are true, valid claims and records that now have been provided. Todd requested the presence of the reporting officer & his hearing on grounds that the disciplinary officer CAPT Jones is allowed to take their written statements as true without the benefit of Todd questioning them which petitioner Todd was contesting and denied under the circumstances such prejudice must be found in this incident.

(35) petitioner Todd then filed the instant ^{Todd} action.

PETITIONER'S ARGUMENT

In determining, whether a person has met this burden, the court reviews the evidence and all factual inferences therefrom in light most favorable to the party opposing the motion. Adicks v. Shkress, & Co. U.S. 144, 157 90 S.Ct. 1598, 608, 26 L.D. 2d 142 (1970);

As the court has said, all reasonable doubt about the facts, are resolved in favor of the nonmovant. K.C. Enterprises v. Am Hard Ware Mutual Ins. Co., 655 F.2d 598, 602 (5 Cir. 1981);

Todd's institutional records, speak for themselves, and are the best undisputed facts and

evidence of their contents in this case and incident, demonstrating that respondents are not entitled to judgment as a matter of law. If reasonable minds might differ on the inferences caused and arising from the undisputed facts, the court should deny Summary Judgment in this case. Electronics Techniques Inc. v. Wackerhult Protective Systems Inc., 669 F.2d 1026, 1031 (5th Cir. 1982);

Todd contends in this case incident that are substantive law, defines, which facts are material and which are not. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505 (1986).

Todd can show very clear and convincing evidence and facts, why he is entitled to win relief under the law, caused by this case incident. Fed. R. Civ. P. 56(e) Anderson, 477 U.S. at 245-46; to determine the facts of this case for purpose of making the Double jeopardy clause and prejudice applies to this case incident for car's analysis. The court under the constitution of the United States, a state agency is required to give persons, due-process of law, before depriving them of life, liberty or property. see — In re SA, 2001 UT App. 307 P.12. 37 P. 3d 1166.

Todd contends this court should recognize petitioner herein as a pro se litigant is entitled to "every consideration that may reasonably be indulged." see Allen v. Friel, 2008 UT 56 P.11. 194 P. 3d 903, And for these reasons all of

Todd's aforementioned submissions in this case should be considered by the court, And Alternatively petitioners objections to the respondents report and recommendation for summary Judgment in this case (noted 23 January 2014, 11).

Todd's medications were discontinued by the C.U.C.F. provider over an isolated - incident for Abuse and diversion of one - pill out of 3 - Types of needed medications that are in fact for three separate, medical conditions. Todd contends as a result of the disciplinary write-up, the hearing officers findings under the "some-evidence" standard in this case he was subjected to ever mental emotional grief, along with physical pain / suffering that as a cause is still continue to day. Id The incident, disciplinary infraction is a very "serious" the "guilty finding" is being used to justify keeping petitioner Todd off any future medications in this filed, which the incident report is being used as factual evidence of bad behavior for Abuse / diversion of C.U.C.F. medication, Id.

The Expansion of the Eighth - Amendment has such protections herein see Hope v. Pelzer, 536 U.S. 730 (2002); Institutional infliction of pain and other discomfort or risk of future harm as a form of punishment for past-conduct violates the due process rights under the U.S. Constitution. Further Todd contends here

his rights to due process and equal protection have been violated by the ("prison-officials") Code of Conduct, which medical co-pay billing records keeping and removal of funds from Todd's inmate account for medication treatment visits, health care slips are garnished because medical and mental health services and these medications that he receives here at C.U.C.F. And other treatment plans are not free. Id.

Petitioner Todd is entitled to relief if the sanction violates his constitutional rights. See Burlett v. Holden, 835 P.2d 989, 991 (UTAH Ct. App. 1992) (Problems concerning or arising out of internal prison administration will be addressed by the courts only with reluctance and upon a showing of a violation of important rights. (internal citations and quotations omitted)). Todd has indicated here which of his constitutional rights were violated in this case. Petitioner's Eighth Amendment right to be free from cruel and unusual punishment has been violated by C.U.C.F. officials actions in that they are denying Todd needed pills and medications that have been prescribed by UTAH state prison officials and providers, which he still needs as a result of his physical & mental health conditions while at the C.U.C.F. ("Prison Garrison").

Petitioner's Todd's fifth and fourteenth Amendment rights to due process of law and to life, liberty and property have been violated by officials actions.

in deducting money from his inmate account for medical co-payments, that's inadequate billing procedures used by the prison-officers in this case, follow-up visits, health care slips put in over medication being discontinued indefinitely. The due process clause under the states constitution is also self-executing Const Art. 1 § 7, which states, under self-executing clause, this court has expressly found a constitutional conduct that generally under the constitutional provision that prohibits certain government conduct that generally qualifies as self-executing clause under the UTAH state constitution Article 1 Sec. 9. The unnecessary rigor clause and cruel and unusual punishment clause which would also applies in this case and incident, see Bott v. Deland, 922 P.2d 732 Const. Art 1 § 22 (citations omitted) Bott v. Deland 922 P.2d 732, 737 (UTAH 1996) 4.

Petitioner Todd also faced Disciplinary Charges for Abuse misuse of this medication. He was found guilty by the Disciplinary hearing officer and received (10-days) punitive isolation because of the hearing officers findings of Guilt (plus) Todd's classification level will not be lifted and he will points increased to keep him in the Hickory maximum security level housing unit for one-year based on the B-13 charge accusation and report and officials statement in this case incident by the parties involved Because now Todd's

points for the write up a total of 9 points is over the applicable point score to allow him back into population before one-year and the disciplinary points off off his classification. Id.

In Superintendent, Mass. Cor. Inst. + Walpole v. Hill, 472 U.S. 445, 447 (1985); The issue — before the court was whether the due process clause applied when an inmates good time credits were taken away. The United States Supreme Court held that an inmate's good time credits are a protected liberty interest, and that a state prison must give an inmate due process before taking them away. Hill 472 U.S. at 447. The procedural right a prison inmate is entitled, under the due process clause depends on the circumstance see Labrum v. Utah Board of Pardon, 870 P.2d 902 (UT 1983).

Petitioner Todd contends under circumstances here in his case would in fact effect disciplinary actions affects an inmates liberty interest. Triggering the demands of such type of due process under Hill 472 U.S. at 454-55. Todd claimed and asserts in this case in the original hearing, he requested the presence of the reporting officer (Bruce Francom III) to be called as a witness in this case incident, because the officer had not personally had witness Todd drop the fifth pin on the floor and he states Todd did take four pins which he saw... in. The reporting officer

stated in his 1R-2 statement report that he saw Todd's mouth given (two oval) yellow pills (two oval) white pills and (1 round one) white pill. Todd placed his hand up to his mouth and he took the pills. He showed us his pills in his mouth on his tongue and the ones we saw were the (two yellow pills) and the (two oval white pills). He swallowed them showed us his mouth and all pills were gone "which is all that's required here T."

Todd contends he should have only received two oval yellow pills (1) oval white pill tablet and (1) round white pill which is Wellbutrin tablet. T (total of four pills) Thus is a clear showing that he should have not been given (Five - pills) as stated in the officers statement and report. See now pick the pill up off the ground / floor that you dropped meaning Todd pick that pill up off the ground / floor and take it. Todd bent over, picked up the pill and put it in his mouth and took it see T.

Todd contends here, under such circumstances its clear and convincing facts / evidence in this case Jackman gave him five - pills by mistake or miss judgment and error by placing and giving him two oval white Ultram tablets which officer Francon ~~th~~ saw in Todd's mouth when he should have only got (1) white oval tablet here in.

20 -

Todd contends a claim, under such case and incident herein under Freeman 2012, WL 6604559, to receive Full-due-process he should receive Three things, which he asserts he did not receive in this case and incident an opportunity when consistent with institutional safety and Correctional goals, to call staff witnesses and present documentary evidence in his case defense. Todd asserts, and contends the Disciplinary officer is only allowed to take the written statements as true of the ~~reporting~~ reporting officer, without the benefit of him questioning him and to be presence of this reporting officer, that's likely to be an essential part of Todd's defense, that's why petitioner Todd was requesting him as a witness to show him co-trace medical records that he was only to get far pills each pill like not 4 blue pills, and receive (1) oval white pill not (2) oval white pills which he saw in Todd's mouth. This incident was in fact Jackson's fault and can doing not Todd's fault and petitioner Todd feels upon information and belief here if officer Francom ~~the~~ could have been at his Disciplinary hearing to show and add this present documentary evidence about Jackson's actions in this case in his defense there is a reasonable probability of a different outcome Id.

under such circumstances and facts were

not done intentional on Todd's part;
 nor any - fault - of - his - own - doing.
 This incident is a medical issue and
 problem over nurse medical Jackman's
 systematic displacement of retained
 medication in a max facility - placing pills
 in inmates hand while sticking out side
 of small door cuff port door. Because
 here in this case and incident there is a
 distinct possibility that medications could
 likely fall from the petitioners hand by
 turning his hand to the side, dropping a
 pill - on - the floor when med - techs don't
 place them into their hand with using
 a clear pill cup in order for the petitioner
 or other inmates to bring them up from
 the cuff - port and placing them into
 their mouths, without cause for a pill
 to be dropped from their hand. I J.

Todd contends the unwarranted disciplinary
 B-13 Charge Explained in this case ~~incident~~
 incident did not happen nor occur in this
 case. The rule or regulation, which can
 result in a prison disciplinary proceeding must
 apprise the inmate of their proscribed conduct.
 The nurse and usual rule is that a statute
 or regulation must give a person of ordinary
 intelligence a fair notice that his own
 contemplated conduct is forbidden. The
 underlying principle is that no - man should
 be held responsible for conduct, which he
 could not reasonable / reasonably understand

to be proscribed see United States v. Harris,
347 U.S. 612 617 74 S. Ct. 808, 812 92 LEd
789 (1954); Todd's petitioners 65B(b) and (d)
is consistent with the contents herein,
policy is said to be the standard to
which is being followed "However" a any
time policy or prison rules go against
the constitutional law, it renders itself
inadequate and without merit, i.e. Id.

Todd contends he was improperly found
guilty by the "some Evidence" standard in
this case by the officers written report
and statement, were the only evidence was
said to be considered by the captain Jones
was officer and nurse which officer
Jackman didn't witness no-abuse or misuse
of medication, nor did officer Francan III
never personally witnessed or observed Todd
tip his hand to drop one pill on the floor.

Especially material in light of Jackmans
Actions by giving Todd Five-pills, such
facts are material if it could affect the out-
come of Todd's petition. A petition under Rule
65B(b) & (d). UTAH Rules of civil procedure the
court is required to dismiss a petition for relief
if the petition appears "frivolous on its face."

UTAH R. Civ. P. 65B(b)(5). A petition with no
material facts under Rule 56, petitioner Todd
filed his petition for extraordinary relief
seeking an order and judgment by the court
in this case under the rules and laws of
the UTAH and federal constitution, Id.

Todd contends he signed under declaration and penalty of 28 U.S.C. 1746, Attesting to the Truth that there is evidence & evidentiary support for the issue in his petition herein which is affixed to it documents supporting the case and incident and the cause of action, which is all that is required here of Todd. In this case, The Supreme Court even recognized that a Prison Disciplinary hearing is an effort at an orderly attempt to arrive at the truth... It's not a formal court proceeding. A Disciplinary hearing is composed of two functions: In the processes the fact finding process and the correctional process. The fact finding process involves a determination of the Truth of the allegation that a specified institutional rule had been violated i.e., That is did Todd violate the rule(?) Id.

Todd contends here these facts alone are sufficient to bring the verified petition herein having a "Genuine issue" for such a type of court dispute and exception to defeat the respondent's motion to dismiss his petition. In addition this case is further supplemented by the affidavit of Todd's attached hereto Id.

The Court may utilize by the ruling on a motion filed in connection with this case

See Pentecost v. Harvard, 699 P. 2d 696 (Utah 1985), concluding that a petitioner's verified pleading in this case was more

then equivalent of an affidavit for the purpose of defeating a motion for summary judgment. Further petitioner Todd contends in this case, if he was not prose and had effective counsel in this case and incident herein then he could have submitted a more detailed facts responsive memorandum, specifically directing the court's attention to these facts. nevertheless The court is the verified petition that must ultimately pass master in this case. Not Todd's responsive and memorandum. The verified petition in this case is clear adequate in addressing Todd's petition for extraordinary relief at issue. It explains in no-uncertain terms, why Todd's claims fail within short of this exception herein. Id.

"Finally" Todd, contends, there is no evidence before this court to suggest Todd intentionally held off on taking the pill dropped for abuse or diversion in order to drive some kind of improper benefit from doing so. It should be noted that Todd has enjoyed no-undue or other wise unfair advantage from accidentally dropping the fifth pill and this one pill out of his three medications. Instead the evidence is to the contrary. Indeed having been now incarcerated for a period of 15-years it's clearly would have been to Todd's advantage and future advantage

* over his medical conditions to take his required medications as prescribed and ordered by the CUCS provider in this case incident without delay. Id.

yet the Law does not require Todd nor any person to perform an act that he is incapable of performing. In such a case like this one, Todd was simply unable to bring his hand up or back in from outside the cell door cuff-port, without dropping a pin out of the line on this incident.

See Wolff v. McDonnell, 418 U.S. 539, 571

Due process safeguards are necessary when

due process rights that are created by statute and state regulations or express constitutional provision are threatened.

* Todd contends that what is the definition in this case of Abuse or misuse of stated medications. Related to due process requirements, Todd must be notified of the charges against him. He must be notified of the existence of the Abuse / misuse of the specific Rule to be A B-13 Charge of violating them. Id.

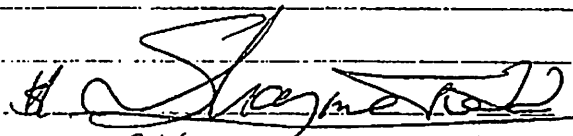
* The policy behind Prison-rules is to prohibit observable behavior that can show clear to have a direct adverse effect on his good order in the institution. i.e. Todd contends officer Francon ~~the~~ did not observe bad behavior that could be shown by Todd's behavior, nor shown clearly in this incident.

to have a direct effect on Todd's good order in the institution under the case circumstance, I do

Conclusion

For the following reasons, petitioner Todd respectfully request and further prays that the court grant his petition relief and in light of the said foregoing, find the disciplinary procedures were not properly followed in the present case and the decision of the I.D.H. be reversed with prejudice.

Date this 13 day of february 2014


STANLEY TODD
petitioner prose.

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the foregoing Response and memorandum in support of his response to Respondents motion for Summary Judgment noted 23rd January 2014 postage prepaid on this 13 day of February, 2014 to the following:

Amanda N. Montague
Assistant Attorney General
Attorneys for Respondents
P.O. Box 140812
160 East 300 South
Salt Lake City, Utah 84114-0812

H Shaynee Todd
SHAYNEE TODD
Petitioner Please

Clerk of the Court
So Judge Wallace A. Lee
Sanpete County Court House
160 North Main Street
P.O. Box 219
Monticello, UT 84642

(Respectfully Submitted)

TH

CC:

IN THE SIXTH JUDICIAL DISTRICT COURT - MAIN AND FOR
SANDPETE COUNTY, STATE OF UTAH *R. Brown*

SHAYNE TODD,
Petitioner,

V.

DENNIS SORENSEN,
Respondent.

PETITIONERS OBJECTIONS
TO REPORT AND THE
RECOMMENDATION By
THE RESPONDENTS.

NOTED: 23, JANUARY 2014.
CASE NO. 130600055

Petitioner SHAYNE TODD, PROSE, objects to All accusations rulings in the respondents submitted memorandum in support of motion for Summary Judgment in this case, AND objects to All adverse rulings in the report and recommendation of the respondent's report "issued" on January 23, 2014. MR. TODD'S petition is set-out primarily in petitioners Response to the respondents Answer on January 23, 2014. MR TODD will address here some of the Comments in the "Report and Recommendation"

I. ARGUMENT

(A). MR. TODD, DID NOT RECEIVE DUE PROCESS AT HIS IDHO HEARING CLAIMS) (ONE & TWO).

MR. TODD contends that in his verified Petition seeking Extraordinary relief in this case Dated on 09-11-13, Pages 3 & 4 on Page 3, Line (K) AND Page 4, Line (R) STATED, petitioner Requested Two witnesses

be called to his Disciplinary Hearing to testify on his behalf, or in the alternative statement from the two witnesses be obtained. Thus the petitioners Request was Denied. AND Due to the erroneous Disciplinary write-up and the known refusal to consider petitioners Two Affidavits and refusal to allow him to call two witnesses on his behalf to defend himself against the Disciplinary write-up.

As stated and cited, in the respondent's response on behalf of the states response under "see" Grossman v. Bruce, 447 F.3d 801, 804-05; By The (10th Cir. 2006) (Prisoners are entitled to some due process in a prison disciplinary proceeding, but not the full panoply of rights of a criminal prosecution).

Due process requires that an inmate receive (1). advance written notice of the disciplinary charges. (2). An opportunity, when consistent with institutional safety and correctional goals to call witnesses and present documentary evidence in his defense. (3) a written statement by the fact finder of the evidence relied on and the reason for the disciplinary action.

(R & R) Then Again stated and cited to case Freeman v. Carroll, No 12-1057, 2012 WL 6604559 (10th Cir. Dec 19, 2012). (quoting Superintendent Mess, Corr. Inst Walpole v. Hill, 472 U.S. 445, 454 (1985) "In addition, the minimum requirement of procedural due process

demand that the Findings of the Prison Disciplinary board are supported by some Evidence in the record. Id (quotations & citations omitted) "see" also Howard v. U.S. Bureau of Prisons, 487 F.3d 808, 812 (10th Cir. 2007) (petitioner contends he did not receive full due process.)

Petitioner was entitled to receive (1) advance written notice of the disciplinary charges against him, (2), an opportunity, when consistent with institutional safety and correctional goals, to call witnesses and present documentary evidence in his defense; and (3), a written statement by the factfinder of the evidence received on and the reason for the disciplinary action. See e.g. Freeman 2012 WL 6604559.

(petitioner ~~was~~ never received the following:)

petitioner asserts he challenges "sufficiency" of the evidence to support the conviction or the "appropriateness" of the sanction in this case.

Petitioner asserts that he was "improperly" found guilty and challenges the review, whether the decision of guilty was made properly, and whether he was fairly treated or allowed to put on a defense. Neither claim nor challenges herein lack any merit.

The case herein is very clear that Todd contends he was denied an opportunity to call witnesses or, alternatively to obtain

Statements) from the Two witnesses. These are not assertions, when they are supported by the record;

Petitioner contends, and asserts, that at his hearing held on May 2, 2013, he in fact did request and asked to have officer Bruce Francom III the reporting officer, and the nurse Tessa Jackson who witnessed the incident to be present at this hearing. This was denied by hearing-officer Captain Keane Jones, ID.

Petitioner further contends and asserts, at this hearing he asked and requested to show and provide for the record here Two Written Affidavits and statements to present documentary evidence for his defense that statements by nurse Jackson that it was not intentional. This was the only request granted by hearing officer Captain Keane Jones, ID.

Petitioner contends that he testified on his own behalf at this hearing and he pleaded not "guilty" to the charges against him under the notice of the B-13 Disciplinary for Abuse or misuse of medication and he further contends that he "did not violate any specified rule by the institutional rule by his actions. This incident was an "accident and not intentional on petitioners part or by nurse Jackson's part. Either or its a distinct - possibility that the medication could likely fall from the petitioners hand by no fault of his own. He asked also for a "continuance in order

for the hearing officer in this case to — investigate to determine if nurse Jackson may have provided the petitioner told, the "wrong does that morning, providing him with too many pills for his (Am - pill - like does) That's only for pills "not Five pills" Because petitioner claims he is only to receive (2) Neurontin (1) Ultram and (1) Wenbutrin for his morning pill he does. For his (pm night pill he does) petitioner claims he gets (2) Neurontin (2) Ultram for his night time pill line no Wenbutrin. This continues, was also denied by hearing officer Captain Renee Jones,

In such case herein - There is supporting - Evidentiary support that nurse Jackson in fact did make a mistake or error in pill like judgment, when providing told with more pills than he should have received at this incident report for his (Am - morning pill he does) of only (1) Ultram tablet "NOT - TWO"

There is further supporting Evidentiary support that in the written report from officer Bruce Francon III attached to the states response on behalf of the respondents Exhibit (C) & (D) that the hearing officer Renee Jones, considered the written reports in reaching his decision in the case, where the reporting officer stated he saw two oval white pills meaning he saw two Ultram tablets in petitioners mouth in which petitioner is only to get or have one oval white pill Tablet does that

morning AM pill - the April 5, 2013 incident. Wherefore if the officer reported he seen two white oval pills and one white round pill that's well but in tablet then there can be little doubt that nurse Jackman did not make a mistake and miss-judgment to determine if he had provided Todd here in the (wrong does) that morning, giving him too many pills as showing Todd showed officers his pills on his tongue and the ones he saw were the two yellow pills and two oval white ones. He swallowed them, showed them his mouth and all pills were gone. Which is all that's required here of petitioner Todd in this case. The reporting officer Bruce Francom ID incident report 12-2. Further states med-tech Jackman told Todd "now pick the pill up off the ground that you dropped and take it" pick that pill up off the ground and take it, "Todd bent over, picked up the pill, put it in his mouth and took it. (End of Report)

Todd did not receive Full Due process, neither Francom or Jackman testified in person. Instead, their written statements were considered by Captain Keene ID. Q & A, petitioner contends with this evidence alone, is enough to defect some evidence in the record. Based on the officer's report, ID. Q & EXHIBIT E. Further more, the record is supported by two witness "Affidavits" presented by two other inmates who personally witnessed the events of April 5, 2013. These statements are

material in light of Jeckman's written statement that he personally observed Todd tip his head to drop one of his pills on the floor, where they (both) heard Todd state and tell nurse Jeckman it was not intentional.

Petitioner contends due process gives him the right to call witnesses, as stated in Wolff the inmate should be allowed to call witnesses and present documentary evidence in his defense, provided there exists no undue hazard to institution safety or correctional goals, "see" Ponte v. Real, 471 U.S. 491, 492 (1985); while the reason for denying a witness need not be part of the hearing record the petitioner later challenge the denial in court, prison officials must provide a written or oral explanation of the denial. In this case that has not happened yet in this case; Todd has not seen a written or oral explanation why Captain Beane Jones denied Francon III and Jeckman's to be called as two witnesses at the hearing.

Petitioner appealed Captain Kesner's determination the appeal was received May 21, 2013 "see" Disciplinary Appeal from attached to the respondents memorandum & exhibit (2).

Petitioner asserts that disciplinary procedures were not properly followed and there was not "sufficiency of the evidence to support the conviction or the appropriateness of the sanction. Id., on May 24, 2012 Suzanne Young

Denied petitioners appeal finding that disciplinary procedures were properly followed and the decision was supported by some evidence "see" exhibit (3).

"see" Hurney v Carney, 602 F. 2d (1st Cir. 1979); set out the requirements for a suit challenging a decision to not call a witness. Todd contends he can state a "valid claim." in this case by showing (1), that the request to call a witness was refused for reasons not having to do with institutional security or correctional goals and (2), that the prison officials, in ruling clearly abused their discretion.

Finally petitioner Todd contends that he did in fact request the presence of the reporting officers for the reason of a fair defense to the disciplinary officer report, because Todd knows if he does not request the presence of this reporting officer at his hearing, such officer is allowed to take their written - statements as "true without the benefit of him questioning them. An essential part of Todd's defense. Thus petitioner asserts a strong argument to make at the hearing that the charges should be dismissed likewise, such a failure to provide a requested reporting officers report may be a strong argument for reversal on administrative appeal. a guilty finding. Id. In light of this due process, petitioner disciplinary sanctions is not supported by some evidence.

that Captain Keane relied on written statements from officer Bruce Francom~~th~~ & nurse / med tech Jason Seckman. There is evidence Todd was denied an opportunity to present their two witness testimony. He can show prejudice here in this case.

II. ARGUMENT

(B). MR. TODD, HAS SUFFERED A WRONGFUL RESTRAINT ON HIS PERSONAL LIBERTY UNDER GS B (6) & (2). INCLUDING CONDITIONS OF CONFINEMENT.

Mr. Todd contends that in his verified petition seeking for Extraordinary relief in this case filed 08-11-13 page (5) count (3) (Line 5 & 6) stated petitioner requested and claims and challenges and seeks to redress inadequacies in the provision of medical and mental health care at the ("C.U.C.F.") Guadalupe, to - Determine if the delivery of medication, popped out of inmate Brister pack's strait out into an inmate's hand while sticking their hand out of their cell door cuff port, is a proper and adequate means to provide the inmate with several types and shapes of medication without either person (staff or inmate) a chance to drop one. Grandis, That there is a distinct possibility that the medication could likely fall from the inmate's hand by no-fault of their own, onto the cell floor. This is a clear showing that when

the medical department and clinical services delivery of medication should use a clear pill-line cup, with all the inmates pills and all appropriate amounts and does inside it to hand the inmate, so he don't need to stick is hand outside the cell door cuff port while the medical providers popped out several pills from their blister packs "allowing in either case or situation for pills to fall on the floor. This is not a case for abuse or misuse of medication or a reason for cause of a diversion incident, Id.

Petitioner contends this is unnecessary rigor and cruel and unusual punishment clear under the UTAH constitution Article 137, and Executed under self-executing Const Art. 137, which states, under self-executing clause this court has expressly found a constitutional provision that prohibits certain government conduct that generally qualifies under this provision. "See Speckman v. Board of Education of the Box Elder County School District, 16 P.3d 533, 407 UTAH ADN. 192000 UT 87 Cite 95 16 P.3d 533, 1/

Petitioner further contends this is clear showing that he accident dropped the pill and it was not intentional grands, that there is a showing a buse of discretion and dereliction of nurse duty and credibility Id. In this case (Both) officials admit Speckman told Todd "now pick the pill

up off the ground that you dropped and take it. pick the pill up off the ground and take it. Todd picked it up off the floor put it in his mouth and swallowed it. Id.

This shows malice and abuse of Authority and not very professional conduct by these prison officials in this case incident. Id. petitioner asserts, the record & exhibit in this case, speak them selves and are the best evidence of their contents.

Policy is said to be the standard to which is being followed. However, if at any-time-policy goes against the constitutional law, it renders itself inadequate and without merit. (Further more) policy & procedure of the prison are a discretion function and can be challenge under Abuse of discretion standard

III. CONCLUSION

The court should reject the report and Recommendation and grant the petition For Extraordinary relief or in the alternative grant an Evidentiary hearing on Petitioners claims (1), (2), & (3) herein seeking said relief.

Date this 30 day of January 2019.

CERTIFICATE OF MAILING
Proof of Service

I do hereby certify that a true and correct copy of the foregoing was mailed, postage pre paid to the Attorney General's office at 160 East 300 South Salt Lake City. UTAH 84114
This 30 day of January 2014.

SIXTH DISTRICT COURT
160 North Main Street
P.O. Box 219
Manti, UTAH 84642

s/ Shayne Todd
SHAYNE TODD
Petitioner pro se

Addendum (c).



Utah Department of Corrections

Page 1 of 1

DISCIPLINARY MD-1 FORM Class MAJOR

Incident Case # 272950
UDC Discipline Case # 676712

Last Name TODD	First SHANE	Middle EUGENE	Offender # / USP # 52731 / 19529
Date and Time Occurred 04/05/2013 06:20 to 04/05/2013 06:21		Incident Location CUCF HICKORY - F	

EXPLAIN CHARGES

B13 ABUSE/MISUSE MEDICATIONS

An inmate was caught dropping his retained med. To keep for a later time. Last updated - 04/06/2013

Reporting Officer BRUCE FRANCOM III		Electronic Verification <i>Bruce Francom Iii</i>	Date 04/06/2013
<input type="checkbox"/> Restitution Requested From Damage Report	Amount	NOTICE: OTHER RESTITUTION MAY BE ASSESSED WHICH WAS NOT CALCULATED PRIOR TO YOUR HEARING.	
Screening Supervisor LEWIS FRED HARRIS		Electronic Verification <i>Lewis Fred Harris</i>	Date 04/16/2013

INSTRUCTIONS FOR OFFENDERS CHARGED WITH MAJOR DISCIPLINARY OFFENSES

1. You have been charged with a violation of rules, regulations or other conduct standards.
2. Major violations entitle you to a due process hearing.
 - a. Your case will be heard by a Hearing Officer no sooner than 24 hours after service unless waived.
 - b. You are not entitled to an attorney. The Hearing Officer can provide a counsel substitute for offenders found incompetent to offer a defense.
 - c. You may request to call witnesses who can offer relevant material, competent testimony. The Hearing Officer will rule on the witness request.
 - d. You do not have the right to cross-examine adverse witnesses nor confront accusers if, in the opinion of the Hearing Officer, it would jeopardize the safety of other offenders or staff, security or operational goals. For the same reason, the Hearing Officer may determine it necessary to take some testimony outside your presence.
 - e. You may be compelled to answer questions at the hearing. Failure to answer may result in the Hearing Officer making an adverse inference from your silence. If criminal charges are contemplated, you will be notified.
 - f. If you wish to appeal the decision in this matter, you may do so by completing the Disciplinary Appeal Form within 20 days after receiving a copy of the MD-2. Your appeal must specifically allege that: (1) required disciplinary procedures were not followed; (2) there was not some evidence to support the Hearing Officer findings; or (3) the disciplinary sanctions were clearly excessive.
3. Minor offenses do not require a due process hearing or an appeals process.
4. Based on the findings of the Disciplinary Hearing Officer you may be assessed all, part or none of the total restitution amount as listed above.

INSTRUCTIONS FOR SERVING OFFICER

1. Hand the offender one copy of the MD-1 with a damage report if restitution is requested.
2. Enter the date served in O-track.

Officer Certifying Personal Service <i>Daniel Buebe</i>	Date and Time Served 04/19/2013 11:00
------------------------------------------------------------	------------------------------------------

Addendum(D).

~~EXHIBIT 5~~

B-13 Charge

STATE OF UTAH
DEPARTMENT OF CORRECTIONS

INSTITUTIONAL OPERATIONS DIVISION MANUAL

Volume: Facilities Operation: Inmate Management

Chapter: **FD01 OFFENDER DISCIPLINE PROCEDURES**

Date Effective: 4-1-86

Date Reviewed: 02-29-12

Pages: 56

Authorized By:

Executive Director, Department of Corrections

FD01/01.00	GENERAL PROVISIONS
FD01/01.01	Purpose of Chapter
FD01/01.02	Cross Reference
FD01/01.03	Definitions
FD01/02.00	DISCIPLINARY PRINCIPLES
FD01/02.01	Policy
FD01/02.02	Rationale
FD01/02.03	Procedure: Discipline Goals
FD01/03.00	LEVELS OF DISCIPLINARY VIOLATIONS
FD01/03.01	Policy
FD01/03.02	Rationale
FD01/03.03	Procedure: Screening
FD01/04.00	DISCIPLINARY DUE PROCESS PROCEDURES
FD01/04.01	Policy
FD01/04.02	Rationale
FD01/04.03	Procedure: Written Notice to Offender
FD01/04.04	Procedure: Presenting Evidence
FD01/04.05	Procedure: Disciplinary Hearing
FD01/04.06	Procedure: DHO Authority
FD01/04.07	Procedure: Representation
FD01/04.08	Procedure: Calling Witnesses
FD01/04.09	Procedure: Cross-Examination
FD01/04.10	Procedure: Confidential Informants
FD01/04.11	Procedure: Self Incrimination
FD01/04.12	Procedure: Double Jeopardy
FD01/04.13	Procedure: Standard of Proof

FD01/04.14	Procedure: Dismissed without Prejudice
FD01/04.15	Procedure: Reporting the Decision
FD01/04.16	Procedure: Appeals - Offender/Officer
 FD01/05.00	 DISCIPLINARY SANCTIONS
FD01/05.01	Policy
FD01/05.02	Rationale
FD01/05.03	Procedure: Imposing Sanctions
FD01/05.04	Procedure: Discipline in Classification Decisions
FD01/05.05	Procedure: Approved Disciplinary Sanctions
FD01/05.06	Procedure: Minimum-Maximum Disciplinary Sanctions
FD01/05.07	Procedure: Punitive Isolation
FD01/05.07	Procedure: Long-Term Punitive Isolation
FD01/05.08	Procedure: Suspension of Punitive Isolation
 FD01/06.00	 DISCIPLINARY INFRACTION CODES
FD01/06.01	Policy
FD01/06.02	Rationale
FD01/06.03	Procedure: General
FD01/06.04	Procedure: B-1 Codes
FD01/06.05	Procedure: B-2 Codes
FD01/06.06	Procedure: B-3 Codes
FD01/06.07	Procedure: B-4 Codes

volunteer. This includes inappropriate offender relationships with staff/volunteers or their family members.

A20 UNWANTED/UNSOLICITED TOUCHING OF A STAFF MEMBER OR CIVILIAN

Elements: An offender may be charged with this offense if they, (under circumstances not amounting to sexual misconduct or physical assault), intentionally use any body part, device or instrument to inappropriately touch, stroke, grab or rub any part of the a staff member's or civilian's body.

Note: This charge is not to be used for accidental contact or incidental contact occurring by chance, without intention or calculation.

FD01/06.05 Procedure: "B" Codes

A. General

1. "B" disciplinary violations are serious and may involve criminal law violations.
2. "B" disciplinary violations should be processed as a major disciplinary but may be referred to OMR/Treatment Team if the case screening supervisor determines there are mitigating circumstances.
3. Any attempt to commit a "B" infraction shall be charged and treated as an actual infraction.

B. "B" Codes

B01 MISUSE OF ADMINISTRATIVE REVIEW

Elements: An offender may be charged with this offense if the offender frivolously, maliciously or vexatiously used or misused any administrative review process.

**B12 POSSESSION OF TOBACCO OR BEING IN AN AREA
WHERE DRUGS, INTOXICANTS, ALCOHOL, OR
TOBACCO ARE PRESENT**

Elements: An offender may be charged with this offense if the offender was in possession of tobacco in a prohibited area or in any area where drugs, intoxicants, alcohol, or tobacco (where prohibited), were present or used.



B13 ABUSE OR MISUSE OF MEDICATIONS

Elements: An offender may be charged with this offense if the offender had in their possession, cell or property any prescribed medication in unauthorized amounts, removed any prescribed medication from the package for reasons other than prescribed use, failed to take medication as prescribed, ~~or~~ failed to turn in unused prescribed medications when required or if the offender altered or removed a label from an authorized medication.

NOTE: This charge is for prescribed medications only. Also, it should not be used for someone who possesses or uses someone else's prescribed medications, see A13.

B14 DISORDERLY CONDUCT, RECKLESS ENDANGERMENT

Elements: An offender may be charged with this offense if the offender:

- A. creates a hazardous or physically offensive condition by any act which serves no legitimate purpose; or
- B. engages in tumultuous or threatening behavior or by making unreasonably loud noises; or

Addendum (E).

Filed by petitioner/Appellant
on Date April 16, 2014

Supplemental Declaration by Mr. Todd
Attached with it (Two-Exhibits),

Filed by Respondents/Appellee,
on Date February 10, 2014

Supplemental Declaration by Keene Jones
(12-2) Incident reports by officers,
Cits to the trial court records,

~~EXHIBIT 4~~

Shayne Todd #52731
Civ. L.F. P.O. Box 550
Gunnison, UT 84634
Prose

EXHIBIT (A)

IN THE SIXTH JUDICIAL DISTRICT COURT - MANTI IN AND FOR
SANPETE COUNTY, STATE OF UTAH

SHAYNE TODD,
Petitioner

V.

DENNIS SORENSON,
Respondent.

SUPPLEMENTAL DECLARATION
OF SHAYNE TODD,
CASE NO. 130600055
Judge: WALLACE A. Lee

I SHAYNE TODD, under oath state the following:

- (1). I am offering this supplement to my previous Declaration to directly address Respondents new allegations.
- (2). I did ask for a continuance at my May 2, 2013, Disciplinary Hearing, which was denied by Captain Keane Jones.
- (3). I indicated that I needed a continuance to be able to properly proceed.
- (4). I specifically, Told the Hearing officer Captain Jones to call in, or by phone, or outside of my presence, officer Francanti and nurse Jackman to testify personally, not only on my own behalf, but the Respondents.
- (5). This request, was not granted; Even though I told Captain Jones, it would not be over burden, the Prison, because they are personally available either in person, or by phone, or E-mail, away, for every Disciplinary Hearing.



Utah Department of Corrections

Page 1 of 1

DISCIPLINARY FINDINGS FORM MD-2 Hearing Type: ORIGINAL HEARING

Incident Case # 272950
UDC Discipline Case # 676712

Name	TODD, SHANE EUGENE	Offender #	52731	USP #	19529
Hearing Date and Time	05/02/2013 09:27	Hearing Location	CUCF HICKORY		

Charges	Pleas	Findings	Amended To	Pleas	Findings
1. B13	NOT GUILTY	GUILTY			

Findings:

Inmate Shane Todd plead not guilty to B13- Abuse/Misuse of Medication.

Finding: Guilty.

This finding is based on the officer's report.

Based on the above findings I assess:

10 DAYS PUNITIVE ISOLATION 05/02/2013 TO 05/12/2013

Hearing Officer Keane Janes	Electronic Verification <i>Keane Janes</i>	Date 05/14/2013
--------------------------------	-----------------------------------------------	--------------------

I realize Disciplinary Hearings occur frequently,
 (6) but under the circumstances of my incident, it would not over burden him, or the Prison if officer's had personally had to be called on the phone, or personally be called to be available at a later time for my Disciplinary Hearing, which could have been done outside of my presents to reach a Correctional Goal.

(7) I specifically told Captain Jones at this Hearing, that I did not violate any rule for such a Cause of action for Abuse or misuse of medication, nor did the officer Francom ~~III~~ witness any Abuse, or misuse of medication.

I told Captain Jones that there is evidence
 (8) nurse Jackman provided me with more pills than necessary, the day of this incident, and I took the pills as required of me. Including the extra-additional one he had given me, that had fallen on the floor.

(9) I specifically stated to Captain Jones that neither officer Francom ~~III~~, or nurse Jackman the day of this incident, witness, any Abuse or misuse of medication on my part, because I did what was required of me per policy.

(10) I must place the pills in my mouth, show the officials the pills in my mouth, then drink water and swallow the pills, then open my mouth, showing them, that I in fact had taken and swallowed the said

medication - per policy:

- (11). The officials (both) observed me take four pills and swallow them, as required of me. Then when told to pick the fallen pill off the floor and take it. I picked the pill up and swallowing it as ordered by the nurse as required of me. Per-policy.
- (12). I did not refuse, nor did I try to hold the pill to prevent from potentially abusing it. Per-policy.
- (13). The officials who distribute medication to me at pill-line, are required to observe that I swallow my medication(s) and if I refuse to swallow the medication the med-tech is only then required to report this information to the medical staff provider. Per-policy.
- (14). Per-protocol, nurse Jackman, should have taken the dropped pill, after realizing that he gave me more pills than necessary, before ordering me to pick it up and take it, if he felt, I intentionally abused, or misused this medication, by intentionally dropping it on the floor. Per-policy.
- (15). This incident was an accident, and not done intentionally on my part. My actions speak for them self. There can be little doubt my actions, were not intentional and

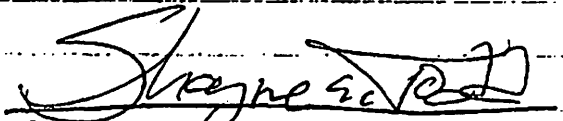
and can be some doubt, there was any Evidence at the Disciplinary Hearing, that I intentionally Abused, or misused my medication by so called intentionally dropping one of my pill(s) on the floor. This Evidence by nurse Jackson's written statement is not Proof, because even by my own omission, I told Jackson it was not intentional, and he gave me more pill(s) than necessary and there is a distinct possibility that the medication fall from my hand, by no fault of my own, when bring my hand back in from the Door cuff port and up to my mouth.

(16), At this Hearing, I did not enter into the evidence "Affidavits" of four-inmates (1). Kurtis Anderson, (2). Jerome Gilliam, who (Both) were witnesses to the incident on April 5, 2013 and also (3). Jacob Saigado, (4). Sedric Johnson, who after this incident witnesses to nurse Jackson dropping pill(s) of other inmates on the floor, without incident.

(17), plus the respondent's failed to address my claims concerning my classification issues over the hearing officers findings of Guilt as well, Respondent's failed to address my claims as for the pill-diversion of medication(s) that was discontinued by the provider for Abuse, or diversion in this case incident, which I've suffered greatly, because of this incident the Captain Jones findings of Discipline imposed on me over this Disciplinary hearing.

I declare under criminal penalty of the state of UTAH that the statements made in this Declaration are True and Correct.

Executed on this 14th day of february 2014

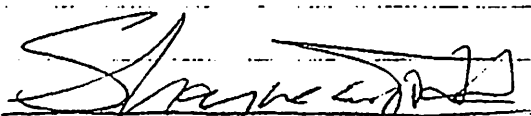
by 
SHAYNE TODD
Petitioner pro se

CERTIFICATE OF MAILING
Proof of Service

I certify that I mailed a True & correct Copy of the foregoing Supplemental - Declaration of SHAYNE TODD, postage prepaid on this 14th day of february 2014

AMANDA N. MONTAGUE (9841)
Attorneys for Respondent
P.O. BOX 140812
160 East 300 South
Salt Lake City, UT 84114-812

SIXTH JUDICIAL DISTRICT
Sanpete County Court House
160 North Main Street
P.O. BOX 219
Monticello, UTAH 84642

by 
SHAYNE TODD
Petitioner pro se

DECLARATION / AFFIDAVIT

PAGE (1) of (2)

I Sedric Johnson IT7046/hereby certify that I have Personal Knowledge of the matters forth with in this Declaration, and if called as a witness in this action. I would testify therein and declares Pursuant to 28 U.S.C 1746

(1) I am familiar with Shaqir Todd #52731

(2) I am housed in the Hickory Unit Section 3- where he currently resides.

(3) I do remember and personally do recall observing the events in question on April 3, 4, and on the 5th of April or on About 2013

(4) while nurse Jackman was distributing medication he dropped a pill on the floor Mr. Todd's pill pack then placed the dropped pill off the floor and placed it on the hand held pill cart.

(5) I remember clearly that Mr. Todd asked nurse Jackman did with pills dropped on the floor out of his pill pack.

(6) I remember clearly that Mr. Todd takes critical medications and he was short several times because of dropped medications out of his pill packs.

(7) I am also aware of him being blamed for intentionally dropping reported action. Because Mr. Todd's pursuing a court action against medical services for dropping his pills on the floor and is not replaced before Mr. Todd has taken the full amount and then having to go without until his pills are reordered by medical.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 29th day of
April 2014 Serrie Johnson
Print Name

Transaction Type: **CHARTING - OBSERVATI** 04/05/2013 09:03 By: JASON JACKMAN,

Summary:

Observations

Measurement	Result	Comment
MEDICATION/DOSE	Tramadol 50mg AM and 100mg PM Neurontin 600mg BID Wellbutrin XL 150mg	
ORDERING PROVIDER	Dr. Blaivas and Dr. Burnham	
ABUSE DETAILS	Background - Inmate takes 2 caps of Gaba, 1 tab of Ultram and 1 tab of Wellbutrin (4 total pills) While conducting pill line on Wed 4/3, I gave inmate his pills and when he was taking them I thought I heard something hit the floor but was unable to determine if it was a pill. On Thursday 4/4 I issued him his pills and he placed the pills in his mouth, he quickly opens it to show that he placed them in his mouth but I thought I only saw or 3 pills there, the Ultram appeared to be missing but I was unable to verify where it had gone. Today while conducting pill line I was able to position myself so I could see his hand the entire time, in order to observe what he was doing. When he received his pills he brought his hand in from the cuff port and quickly turned his hand to the side dropping a pill on the floor. He then placed the remaining pills in his mouth and opened to show me they were there. I was able to see that the Wellbutrin was missing from his mouth. I allowed him to take his pills and then he opened his mouth for an oral check. When he was done I informed him that he needed to pick the pill up off the floor and take it. He acted like he didn't know what I was talking about so I again informed him that he needed to pick it up now! He then reached down, picked it up and swallowed it. I informed him that I would be notifying provider of his diversion of meds. it appears that he drops whatever pills will fall and places the remaining pills in his mouth to show that he is taking something.	
PROVIDER NOTIFIED?	YES	DR. BURNHAM

Transaction Type: **MEDICATION ADMINISTE** 04/05/2013 06:42 By: JASON JACKMAN, RN

Summary: ||Rx: Dose: 1.0

Dose: 1

Drug: TRAMADOL HCL TAB 50MG (TRAMADOL HCL TAB 50 MG)

Quadrant: A

Admin. Type: A

Date: 04/05/2013Time: 06:34

Rx: 368743-3

Issued By: jjackman

Transaction Type: **MEDICATION ADMINISTE** 04/05/2013 06:42 By: JASON JACKMAN, RN

Summary: ||Rx: Dose: 1.0

Dose: 1

Drug: GABAPENTIN CAP 300MG (GABAPENTIN CAP 300 MG)

Quadrant: A

Admin. Type: A

Date: 04/05/2013Time: 06:34

Rx: 368742-3

Affidavit

I, Kurtis Andersen, certify that these events are true.

I have been Shayne Todd's cell-mate for the last couple of months, I since 2-14-13. Mr. Todd receives

4 Several pills at each pill-line, morning and evening, respectively. On the morning of April 5th, 2013 I very distinctly heard the med-tech that was on duty tell Shayne, "now pick up the one you dropped." Shayne did so saying, "It wasn't intentional." The next pill line Shayne did not receive any medicine and still has not, to this date, April 22nd 2013.

4-22-13 Kurtis Andersen
Kurt Andersen 23131
H. 305

Affidavit

I Serame Gilliam being competent to make this Affidavit and having personal knowledge of the matters herein, declare pursuant to 28 U.S.C. § 1746;

On the 5th of April 2013, at AM-
pill line I received my morning meds
from the AM med-tech cell 304 after
the med-tech and officer closed my
support, left and when I next door
to cell 305 Todd's cell, I overheard
the med-tech tell Todd, now pick
up the one you dropped and take it.

I overheard Todd say it was not
intentional picked it up and swallowed
it and then overheard the med-tech
tell him well now you can kiss (all)
of your medication bye, bye.

I declare that this is under
penalty of perjury that the foregoing
is (true) and (correct) Executed this
5th day of ~~April~~ April 2013;

H. J. Gilliam
cell 304

AMANDA N MONTAGUE (9941)
Assistant Attorney General
SEAN D. REYES (7969)
Attorney General
Attorneys for Respondent
PO Box 140812
160 East 300 South
Salt Lake City, Utah 84114-0812
Telephone: (801) 366-0216

IN THE SIXTH JUDICIAL DISTRICT - MANTI
IN AND FOR SANPETE COUNTY, STATE OF UTAH

SHAYNE TODD,

Petitioner,

v.

DENNIS SORENSEN,

Respondent.

DECLARATION OF KEANE JANES

Case No. 130600055

Judge WALLACE LEE

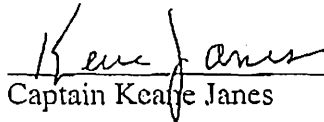
I, Keane Janes, under oath state the following:

1. I am over the age of 21 and a resident of the State of Utah.
2. I am employed with the Department of Corrections as a disciplinary hearing officer.
3. I conducted a hearing for Shane Todd, offender number 52731, on May 2, 2013.
4. Mr. Todd was accused of Abuse/Misuse of Medication, based on an incident which occurred on April 5, 2013.
5. Mr. Todd was present at the hearing and testified on his own behalf.

6. Mr. Todd also asked to present affidavits from two other inmates, Kurtis Anderson and Jerome Gilliam.
7. I accepted both affidavits and considered them in reaching my decision. The affidavits are attached to this Declaration at Exhibits A and B.
8. I also considered the written reports from Officer Bruce Francom III and nurse Jason Jackman in reaching my decision. Redacted copies of their reports are attached to this Declaration at Exhibits C and D.
9. My decision is attached to this Declaration at Exhibit E.

I declare under criminal penalty of the State of Utah that the statements made in this declaration are true and correct.

Executed on this 22 day of January, 2014.

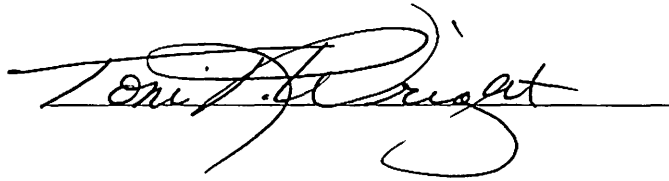


Captain Keefe Janes

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the foregoing **DECLARATION OF KEANE JANES**, postage prepaid, on this 23rd day of January, 2014, to the following:

Shayne Todd
Inmate #52731
Central Utah Correctional Facility
P.O. Box 550
Gunnison, UT 84634

A handwritten signature in black ink, appearing to read "Toni F. Prigat", written over a horizontal line.



Utah Department of Corrections

Narrative 1 of 2

Page 1 of 1

NARRATIVE

INCIDENT REPORT IR-2

Incident Case Number 272950

Information in this report considered PRIVATE or PROTECTED under the Government Records Access Management Act (GRAMA), Utah Code Annotated 63-2-101, except for the information which also appears in the Initial Contact Report(ICR).

On 4/05/2013 at approximately 0620 hrs I was going through with medical doing pill line. We came up to cell 305 to Shane Todd #52731. Inmate Todd was given two oval yellow pills, two oval white pills, and a round white pill. Todd placed his hand up to his mouth and took the pills in. He showed us his pills on his tongue and the ones I saw were the two yellow pills and the two oval white ones. He swallowed them, showed us his mouth and all pills were gone. Med-Tech Jason Jackman told Todd, "now pick the pill up off the ground that you dropped and take it!" "Pick that pill up off the ground and take it!" Inmate Todd bent over, picked up the pill put it in his mouth and took it. E.O.R.

Reporting Officer BRUCE FRANCOM III	Electronic Verification <i>Bruce Francom Iii</i>	Date 4/6/2013
Supervisor LEWIS FRED HARRIS	Electronic Verification <i>Lewis Fred Harris</i>	Date 04/16/2013



UDC

GRAMA Classified

Utah Department of Corrections Private

Narrative 2 of 2

Page 1 of 1

NARRATIVE

INCIDENT REPORT IR-2

Incident Case Number 272950

Information in this report considered PRIVATE or PROTECTED under the Government Records Access Management Act (GRAMA), Utah Code Annotated 63-2-101, except for the information which also appears in the Initial Contact Report(ICR).

On 4/5/13 while conducting pill line in Hickory I issued inmate Todd, Shane #52731 his morning medications. When he received his pills he brought his hand in from the cuff port and quickly turned his hand to the side dropping a pill on the floor. I was able to visualize the pill fall from his hand. He then placed the remaining pills in his mouth and opened to show me they were there. I was able to see that the Wellbutrin, a small, round, white pill was missing from his mouth. I allowed him to take his pills and then he opened his mouth for an oral check. When he was done I informed him that he needed to pick the pill up off the floor and take it. He acted like he didn't know what I was talking about so I again informed him that he needed to pick it up now! He then reached down, picked it up and swallowed it. I informed him that I would be notifying provider of his diversion of meds. His medications were discontinued by the provider for abuse and diversion of medication.

Reporting Officer JASON JACKMAN	Electronic Verification <i>Jason Jackman</i>	Date 4/7/2013
Supervisor LEWIS FRED HARRIS	Electronic Verification <i>Lewis Fred Harris</i>	Date 04/16/2013

AMANDA N MONTAGUE (9941)
Assistant Attorney General
SEAN D. REYES (7969)
Attorney General
Attorneys for Respondent
PO Box 140812
160 East 300 South
Salt Lake City, Utah 84114-0812
Telephone: (801) 366-0216

IN THE THIRD JUDICIAL DISTRICT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

SHAYNE TODD,

Petitioner,

v.

DENNIS SORENSON,

Respondent.

SUPPLEMENTAL DECLARATION OF
KEANE JANES

Case No. 130600055

Judge WALLACE LEE

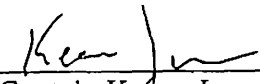
I, Keane Janes, under oath state the following:

1. I am offering this Supplement to my previous declaration to directly address Mr. Todd's new allegations.
2. Mr. Todd did ~~not~~ ask for a continuance at his May 2, 2013, Disciplinary Hearing.
3. He ~~never~~ indicated in any way that he was not prepared to proceed.
4. I do not specifically recall if Mr. Todd asked for Officer Francom and nurse Jackman to testify personally.

5. However, I would not have granted that request if made because it is contrary to the Department of Corrections' policies to require reporting/witnessing officers and personnel to personally appear for inmate disciplinary hearings.
6. Disciplinary hearings occur frequently and it would overburden the prisons if officers and personnel had to be personally available for every disciplinary hearing.

I declare under criminal penalty of the State of Utah that the statements made in this declaration are true and correct.

Executed on this 5th day of February, 2014.

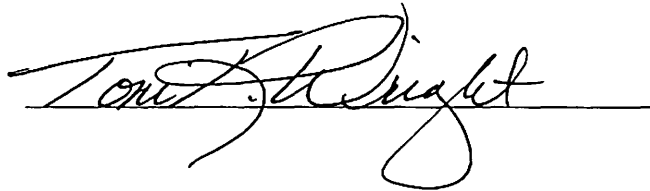


Captain Keane Janes

CERTIFICATE OF MAILING

I certify that I mailed a true and correct copy of the foregoing **SUPPLEMENTAL DECLARATION OF KEANE JANES**, postage prepaid, on this 10th day of February, 2014, to the following:

Shayne Todd
Inmate #52731
Central Utah Correctional Facility
P.O. Box 550
Gunnison, UT 84634

A handwritten signature in cursive script, reading "Tony H. Knight", written over a horizontal line.

Addendum(F).

Filed by Petitioner/Appellant
on Date September 11, 2013

Mr. Todd's petition for Extraordinary Relief and also his memorandum in support of petitioner's petition for Extraordinary Relief.

- * Cites to the trial court record(s).
- * Issues properly raised in the trial court.
- * Claims presented to the trial court
- * Mr. Todd properly preserve such claims set out in his original petition.

Filed by petitioner/Appellant

on Date February 20, 2014 Mr. Todd's

Reply memorandum in support of
petitioner's motion for summary judgment
cites to the trial court records.

~~EXHIBIT 3~~

Shayne Todd
Attorney Pro Se
Central Utah Correctional
P.O. Box 550
Gunnison, Utah 84634

SIXTH DISTRICT COURT

2013 SEP 11 AM 9:39

CLERK:

J. Brown

IN THE SIXTH JUDICIAL DISTRICT COURT, MANTI COUNTY

STATE OF UTAH

SHAYNE TODD,
Petitioner,

vs.

DENNIS SORENSEN, Warden at
Central Utah Correctional Facility,
Respondent.

* PETITION FOR EXTRAORDINARY
* RELIEF
*

* URCP Rule 65B
*

* Judge: *Wallace A Lee*
* *130600055*
*

COMES NOW the Petitioner, pursuant to the following Rule of Civil Procedure:

X Rule 65B(b) claim is based on wrongful restraint on personal liberty (including conditions of confinement).

X Rule 65B(d) claim is based on a wrongful use of judicial authority or failure to comply with a duty; actions by the board of pardons and parole or disciplinary hearings.

And for cause of action alleges as follows:

1. The Respondent is, Warden Dennis Sorensen, Central Utah Correctional Facility, P.O. Box 550, Gunnison, Utah 84634.
2. Petitioner is being restrained at the following location: Central Utah Correctional Facility, P.O. Box 550, Gunnison, Utah 84634.
3. Cause or pretense of the restraint: Petitioner is challenging the following (check one and give date of action).

Board of Pardons hearing, which took place on .
X Disciplinary Hearing, which took place on April 2, 2013..
X Condition of confinement, which took place on April 2, 2013.

4. No other plain, speedy and adequate remedy is available regarding on this matter.
5. A short, plain statement of the facts on the basis of which Petitioner seeks relief.

CLAIM I

- a. On or about April 5, 2013, petitioner was housed in the Hickory (maximum security) unit at the Central Utah Correctional Facility.
- b. When an inmate is housed in the Hickory Unit their prescribed medication is delivered by the Medical Technician to the inmate through the cuff port in the cell door.
- c. On or about April 5, 2013, a housing officer and medical technician came to petitioner's cell door to deliver his morning dose of the prescribed medications of Ultram, Neurontin and Wellbutrin. Petitioner is required to stick his hand out the cuff port and the medical technician pops the medication out of a blister pack into petitioner's hand.
- d. Petitioner pulled his hand back through the cuff port and put all the pills five (5) in his mouth. Petitioner opened his mouth to show the medical technician and he housing officer the pills in his mouth. Petitioner took a drink of water and swallowed the medication.
- e. The medical technician claims to have noticed one of the pills on the floor in petitioner's cell. Petitioner was accused of intentionally and purposely dropping the pill on the floor in an attempt to keep the medication for a later time and refusing to pick it up. Petitioner received a disciplinary write up.
- f. On or about May 2, 2013, Petitioner was found guilty by the Inmate Disciplinary Hearing Officer and received 10 days punitive isolation.

PETITION FOR WRIT OF EXTRAORDINARY RELIEF

g. Petitioner claims that he did not know that one (1) out of the five (5) pills put in his hand by the Medical Technician, had fallen to the floor when Petitioner pulled his hand back through the cuff port.

h. Petitioner did not look at the pills in his hand when he put them in his mouth and showed the housing officer and medical technician the pills before drinking some water to wash them down.

i. Petitioner further claims that the Medical Technician knows or should know that there is a good likelihood, that pills may slip out of the inmate's hand when the Medical Technician pops the pills out of a blister pack straight into the inmate's hand, while the inmate is sticking his hand out the cuff port.

k. Petitioner requested two witnesses be called to his disciplinary hearing to testify on his behalf, or in the alternative statement from the two witnesses be obtained.

Petitioner request was denied.

l. Petitioner did not knowingly and intentionally drop medication from his hand to retain for a later time. Petitioner was unaware that medication had dropped from his hand until the Medical Technician informed the Petitioner. Petitioner picked up the medication when he was made aware that it had fallen from his hand and took the medication as prescribed. Petitioner did not misuse or abuse the medications that are prescribed to him. Thus, petitioner should not have received a disciplinary write up and should not have been found guilty of the disciplinary write up and sanctioned to 10 days punitive isolation.

CLAIM NO. II:

m. Petitioner re-alleges and incorporates by reference paragraphs a thru l herein.

n. Petitioner claims that the information in the officer's report is not reliable, nor relevant, because the reporting officer did not personally witness the incident.

o. The report is based on mere speculation based on hearing from a third party, that the petitioner purposely dropped one pill out of the five placed in his hand in an attempt to keep it for a later time. Again, the reporting officer did not witness, but based his report on hearing from a third party that petitioner refused to pick up the pill off the floor and swallow it.

p. Petitioner claims that had the reporting officer witnessed the incident he would have personally witnessed that the med-tech allowed the petitioner to put the pills in his mouth, had petitioner open his mouth for an oral check and then allowed the petitioner to swallow the pills. After which, the Med Tech informed the petitioner he had dropped one of the five pills and allowed the petitioner to pick the pill up and take it.

q. Petitioner was not attempting to divert taking his medication to keep it for a later time. One of the five pills popped into the petitioner's hand by the Med Tech simply fell from the petitioner's hand after petitioner pulled his hand back through the cuff port.

r. Due to the erroneous disciplinary write up and the IDHO's refusal to consider petitioner's two affidavits and refusal to allow petitioner to call two witnesses on his behalf to defend himself against the disciplinary write up. The petitioner classification level will not be

increased and he will remain in maximum security for another year based on the false accusations by the parties involved.

COUNT III

s. Petitioner re-alleges and incorporates by reference paragraphs a thru l and m thru r herein.

t. Petitioner claims that the Medical Department and Clinical Services should be audited or investigated to determine if the delivery of medication, popped out of a blister pack, into the petitioner's hand while he is sticking his hand out of the cuff port in the cell door, is a proper and adequate means to provide the petitioner with medications. Investigate that there is a distinct possibility that the medication could likely fall from the petitioner's hand at no fault to the petitioner.

6. The legality of the restraint has already been adjudicated in a prior proceeding:

☐ Yes. See attached copy of the pleadings filed by the petitioner in any prior proceeding that adjudicated the legality of the restraint. The reasons for denial are as follows: _____

☒ No.

7. Petitioner requests that he be appointed legal counsel based on the attached motion and affidavit of Impecuniosity.

8. The following documents are attached hereto and incorporated herein by reference (check all that apply):

- ☒ An affidavit of Impecuniosity and certificate from the Inmate Accounting
- ☒ Office, if you are requesting a waiver of the filing fee.
- ☒ Affidavits that support Petitioner's allegations.
- ☒ Copies of records that support Petitioner's allegations.
- ☒ Any documents available to Petitioner that are associated with the process that caused the illegal restraint (this is a necessary attachment)

Petitioner was unable to obtain and attach the following documents because (list the efforts you made to obtain the documents and the results of your efforts).

10. That pursuant to URCP Rules 65B(b)(3) and/or 65B(d)(3) as appropriate, Petitioner requests that this Court order the Respondent to obtain such transcripts of proceedings or records which are relevant and material to this case and requests that the responsible court/administrative agency be directed to pay the costs of the proceeding. (See attached motion and affidavit of Impecuniosity).

WHEREFORE, Petitioner prays that this Court (check the appropriate relief):

☒ Schedule an evidentiary hearing at which time Petitioner may be present and represented by counsel.

☒ Permit Petitioner, who remains indigent, to proceed without prepayment of costs, fees or other assessments.

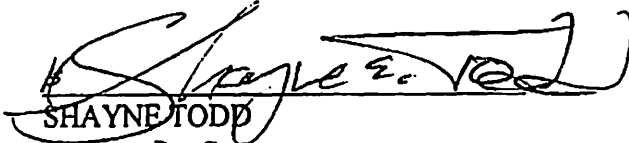
☒ Order Respondent to provide transcripts of records of proceedings which are relevant to this cause of action.

☒ Grant Petitioner the authority to obtain subpoenas In Forma Pauperis, for witnesses and documents necessary to assist in the proof of the facts alleged in the petition.

X Issue an Order for Extraordinary Relief to have the Petitioner brought before it, to the end that the illegal activity of the Respondent be terminated.

X Other relief requested: Order that the disciplinary write up be expunged from the petitioner's file.

DATED this 6 day of September, 2013.


SHAYNE TODD
Attorney Pro Se

IN SUPPORT OF:

Andrade v. Hauck, 425 F.2d 1071 (5th Cir. 1971), "[E]very prisoner has a constitutional right of access to the courts to present any petition he might have concerning his confinement. He cannot be disciplined in any manner for making a reasonable attempt to exercise that right.

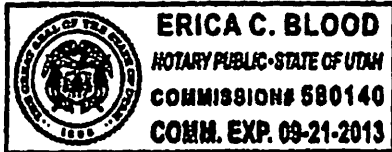
Access to the courts is a fundamental precept for our legal system of government. No citizen, regardless of his or her transgressions, is ever to be legally - consigned to the total and unreviewed power of any branch of government. To make the system work to maintain the proper checks and the proper balance, no person subject to the power of the government can be denied communication with or access to each of the three spheres of governmental authority. This principle serves the highest interest of government as much as it serves the needs of the "individual."

STATE OF UTAH)
)
 :SS
COUNTY OF SANPETE)

I the undersigned petitioner, declare under penalty of perjury that the information I have provided in this petition is true and correct.


SHAYNE TODD

SUBSCRIBED AND SWORN to before me on this 6 day of September, 2013.




ERICA C. BLOOD
NOTARY PUBLIC
My Commission Expires: 09-21-2013

4-22-13 Kurtis Andersen
Kurt Andersen 23131
H. 305

~~Shayne E. Todd~~ #5273/
C.V.C.F. P.O. Box 550
Gunnison, UT 84634
Pro-se

SIXTH DISTRICT COURT

2013 SEP 11 AM 9:47 PAGE(1) of (13)

CLERK

J. Brown

IN THE SIXTH JUDICIAL DISTRICT COURT, SANPETE COUNTY
STATE OF UTAH

SHAYNE E. TODD,
Petitioner,

✓
DENNIS SORENSEN, Warden,
Central UTAH Corr. facility,
Respondent.

MEMORANDUM IN SUPPORT OF
PETITIONER'S PETITION FOR
EXTRAORDINARY - RELIEF —
URCP RULE 65(b),
DISCIPLINARY HEARINGS.

Judge Wallace A Lee
130600055

Petitioner SHAYNE E. TODD, submitted by and
through prison contract attorneys, hereby submit
the following memorandum in support of petitioner's
petition for extraordinary relief under URCP R. 65
"Disciplinary hearings";

INTRODUCTION:

SHAYNE E. TODD, an inmate at the Gunnison Prison
was accused of dropping his retained medication
to keep for a later-time. In this case Todd
was heard by a hearing officer on May 2, 2013.
The hearing officer found him "Guilty" and Todd
was "disciplined" for dropping his retained
medication on accident. Todd's sentenced
to (10-days) of punitive isolation, beginning on
5/12/13 at time 2:30 and ending on 5/17/13

The Hearing officer found, based on the office report some-evidence of Todd's guilt, Todd administratively appealed the hearing officer decision / finding(s) ... (To no-avail).

In his Appeal, Todd claimed in the original hearing, he requested the presence of the reporting officer (BRUCE FRANCOM III), to be call as a witness, because the officer had not personally witness the B13-incident. Todd asserts, the disciplinary officer is allowed to take their written statements as True, with the benefit of him questioning them, and to be presence of this reporting officer, is likely to be an essential part of his defense, that's why Todd was requesting him as a witness — and if the hearing officer ~~does~~ ^{does} not produce his requests for the B13 charge, should be dismissed, or the sentence reduced to a housing violation, or even a regulation placed incident - infraction, at best.

Todd asserts in his defense, in inmate disciplinary hearings, are entitled to full disclosure of the details concerning the charges against them. Todd must have

have been notified of the existence of the specific rules, prior to the charge of violating them and such rule... The policy behind prison rules is to prohibit observable — behavior, that can be shown clearly to have a direct adverse effect on an inmate or on good order in the institution. In this case the rule is too broad for a B13-Charge, Abuse or misuse of medication, As explained in the MPI Charges: states, an inmate was caught dropping his retained med, to keep for a late time. Last update 4/6/2013.

Todd asserts here, under the Highten Standard of review, under the mandatory language of statute, policy and procedure of prison's are discretion function, and can be "Challenged" under abuse of discretion standard "especially" when the reporting officer didn't even personally witness the incident here. Wherefore, Todd asserts in the above mandatory language thus The policy behind prison rules is to prohibit - observable - behavior, that can be shown to have a direct adverse effect on an - inmate or on good order in the institution. Todd claims that could require

a reporting officer to personally witness so behavior of an inmate, that results in a major disciplinary infraction. In fact, Petitioner should be entitled to call the presence of the reporting officer, within the hearing, when such corroborating evidence, or testimony, is needed when in question - the report not being "reliable" as Todd has asserted, all along in this case. In such a case, the hearing officer should produce the reporting officer as a witness, or other corroborating evidence,

petitioner asserts, because the known purpose of ensuring inmate's swallow their retained medication, is to prevent them from "potentially abusing or misuse of said medication."

"Herein this case", the medical records and charting med tech's notes, speak for themselves and are the best evidence of their contents. Todd did not violate any prison rule, nor acting disruptively in any way, by accidentally dropping one of his (five - retained) medications on the cell floor, then quickly picking it up off the floor and swallowing it, soon

after being notified one had dropped on the floor, by the medical technician here. Which such actions, can't be construed as being a prison violation, upon information and belief, Todd asserts, that the presence of the reporting officer is "likely" to be an essential part of his defense, at the hearing and by asking such officer as a witness and such witness is not produced herein. Should be a strong argument to have the B-13 disciplinary charge dismissed, and also likewise the failure to provide the requested witness of the reporting officer may also be a strong argument for a reversal on the administrative appeal level, after the guilty finding.

Todd requested "two witnesses", be called to this disciplinary hearing to testify on his behalf, or in the alternative statements from the two witnesses be obtained. Todd's request was denied. Todd even attempted and tried to provide at the hearing in this case, "two - Affidavits", as documentary evidence of both his and the reporting officers on this herein. Todd told the

(6-)

Two provided affidavits with the hearing officer and should be part of the case file record.

Todd asserts, he made it very clear herein this incident, it was an accident, and not done on-purpose, he was sorry, and would do his best to make sure it "doesn't happen again period, nor future."

After review of petitioner Todd's institutional and criminal history, he has been under C.V.C.F supervision for almost a year now, and has not had any negative incidents with staff or inmates, and in fact, since the past three-years, under the supervision of medical clinical services delivering morning and night doses, of the prescribed medications of Ultram, Neurontin and Wellbutrin, he has never had a negative incident, or accused of intentionally and purposely diverting medication for any other illicit purposes, rather than merely for chronic pain relief and other mental health use, that is sufficiently serious ~~to~~ to mandate long-term prescription meds

7

FACTUAL BACKGROUND

As factual background for this memorandum in support of Todd's petition for extraordinary relief of disciplinary hearing, petitioner realleges the "statement of facts" set forth in his petition. Petitioner further realleges and incorporates by reference all factual allegations contained in his petition herein. Petitioner's Verified Petition

Under the Constitution of the United States a state agency is required to give persons due process of law, before depriving them of life, liberty, or property. If a state's action affects an interest in life, liberty, or property, such state's action is subject to the Due Process Clause.

The due process clause under the state's constitution is also self-executing. Const. Art. 1, § 7, which states: under self-executing clause, this court has expressly found a constitutional provision that prohibits certain government conduct that generally qualifies a self-executing clause under the UTAH State Constitution Article 1, Section 9. The Unnecessary and Unusual Punishment Clause.

(7-)

ARGUMENT

In the face of well established and controlling precedent in this jurisdiction, which precedent unequivocally holds that, The Supreme Court has stated that due process safeguards must be observed when prison officials deprive inmates of statutorily authorized "good time" The Court also indicated that the same safeguards apply "Solitary confinement." Wolff v. McDonnell, 418 U.S. 539, 571. (Due process safeguards are necessary when due process rights that are created by statute, state regulations, or express constitutional provision are threatened.)

Courts have found due process violations when prisoners are disciplined without the chance to get witness testimony, or present evidence. Courts have also found due process violations when punishment is based on "vague" claims, some cases in this type of claims, were very successful made are. Hatch v. District of Columbia, 184 F.3d 846 (D.C. Cir. 1999); Ayers v. Ryan, 152 F.3d 77 (2d Cir. 1998); Taylor v. Rodriguez, 238 F.3d 188 (2d Cir.

Todd filed this petition for Extraordinary relief.

he suffered a wrongful restraint on his personal liberty. Specifically, Todd claims, the hearing officer violated his due process rights at the May 2, hearing, by improperly found him guilty and was not fairly allowed to put on a defense, and he was treated much different than the way most prisoners are treated in such a disciplinary hearing. The prison did not follow its own regulations under the clinical services Rules/policies of retained medication, because no rule or infraction "exists" for an inmate to be held accountable for such type of medical violation, according to retained medication

Todd asserts, that he did not intentionally drop such pill, nor did ~~he~~ he ever see or he the pill drop on the floor... He can't be held responsible for something out of his control or force of nature, within an action being an accident herein. There is no proof or document of Todd ever being informed or put on notice of such a charge or rule violation, "since this one time incident", this would provide clarity to such vague portion of Todd's prison disciplinary matter.

Todd argued for protections at the hearing and on his administrative appeal. And Todd's prison regulations are based on Wolff, and other related cases he can use Wolff to challenge such proceedings.

A rule or regulation, the violation of which can result in disciplinary proceedings must apprise inmates of the proscribed conduct. The usual rule is that a statute or regulation may "give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden. The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed." Laaman v. Helgemoe, 437 F. Supp 265, 321-322 (D.N.H. 1977). Citing United States v. Harris, 347 U.S. 612, 617, 74 S. Ct 808, 812, 98 L. Ed 889 (1954). The Laaman court also refers to Parker v. Levy, 417 U.S. 733, 757, 74 S. Ct 2547, 41 L. Ed 2d 438 (1974).

Todd claims, in the initial hearing he was denied the chance to be heard in light of the clinical services retained med's police clearly states; under Utah Law, Controlled Substance Act - R157-37-603, to ensure they do not enable inmates to abuse controlled

(10)

Substance or other drugs. one of the ways that they ensure inmates do not abuse their prescription medication is to ~~require~~ / require medical technician (medtechs) and other official (employee staff) observe an inmate swallow his pills, when they are administered during pill-line. The employees who distribute medication at pill line are only required to observe inmates swallow their medication, and if the inmate "refuses" to swallow the meds the med tech is "then" required to report this action or information to the medical staff provider at CUCF, and Utah Department of Corrections.

Todd asserts here, he swallowed his pills he did not "refuse" or "hide" the tablet to keep for a later time, nor was he "caught" with the dropped pill after pill line was conducted herein... "For any such abuse / misuse of meds (see attached exhibits medtechs report) herein,

Consequently, Todd was still written up, charged and sentenced to (10-days) punitive isolation. And "in addition" he received as a result of the hearing officers findings, Todd will be subjected to have to stay longer in a maximum security Level Two facility.

A Total of 12-month(s) longer than the time of his punishment for a disciplinary offence, until the B13-violation points and the abuse/misuse points reports, for bad behavior, falls-off his file and off his reassessment record for the "Guilty finding herein" False imprisonment, where Todd is now being held in SHU for 360 days, beyond the last day of the penalty imposed on him over a year ago for a management override for two C write ups (August 2012, Gittens v. New York, 504 N.Y.S.2d 971 (1986))

Todd asserts this incident is a "very-serious" disciplinary violation for the "some evidence" standard for just an officers report herein. The hearing findings are being used to justify, keeping Todd off all his needed medication and his being used as evidence of bad-behavior to deny him future pain and long-term use of medication. Todd was currently on and prescribed over "Three-years now", because of the abuse potential something he was improperly found guilty of doing, when he didn't disobey and was in compliance to such med tech & officers commands and orders herein. (The incident was an accident)

Furthermore, Todd should not have to gain officers confidence, by following his personal prescribed treatment plan already in place. Thus essentially would make it impossible for him to receive or get a fair impartial review, or any type of investigation through the C.U.C.F. officers

Todd asserts, he realizes the hearing here, is not a formal court proceedings, but a disciplinary hearing due-process, in fact, combines - two

Function(s), in the Proceedings. The fact - Findings Process, and the correctional process

The fact-finding process involves a determination of the Truth of the allegation that a specified institutional rule - had been violated. "That is did the inmate - violate the known Rule." Wolff v. McDonnell 418 U.S. 539 (1974)

Determinative Law. The imposition of a sentence is reviewed for an abuse of discretion. State v. Eplin 2011 UT App 229, 262 P.3d 440., see Quas v. Utah Bd of Pardons 2011 UT App 301 P.3d 518 (noting "judicial review is allowed on petition seeking extraordinary relief only to review claims that a petitioner was denied procedural due process in the proceeding before the Board, disciplinary hearings.

The procedural rights a person is entitled under the due process clause depends on the circumstance. Labrum v. Utah State Bd. of Pardons, 870 P.2d 902 911 (UTAH 1993). Under Superintendent v. Hill, 41 U.S. 445 (1985). This is a very low standard. The evidence relied upon is defined as such evidence that a reasonable person might accept as adequate to support the finding of the D.H.O. upon information and belief, Todd asserts, it is the responsibility of the D.H.O. to determine whether or not the information in such report is reliable, and relevant, of such Truth for a Guilty finding, under the circumstance,

Todd asserts the officers report, does not show all the known facts, or enough evidence that was presented to support the Guilty -

Finding - pluse-fells, to provide what evidence which led to that of the hearing officers conclusion. Excluding bias, rumor or any personal unrelated knowledge about the particular inmate. Bryant v. Coughlin, 77 N.Y.2d 642, 649, -50 (1991). In this case, with Todd taking heavy neuropathic pain relievers, staff of Mickey unit felt there was greater concern for potential abuse, thus-Todd was prejudice.

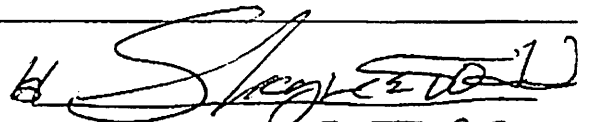
The law is clear that not all types of disciplinary actions affect an inmates liberty interests, triggering the demands of due process, but Todd asserts, and claims, this case here, is not one of them cases.)

Here Todd has a protected liberty interest and that a state prison must give an inmate due process before taking them away herein in violation of his rights and officer's actions are causing injury to Todd's right to be heard in a fair and impartial manner.

CONCLUSION

Based upon the foregoing, petitioner Todd ask this court to re-examine the decision of May 2, 2013. Hearing and in the light of the foregoing, Todd respectfully request that this court find the disciplinary procedures were not properly followed and that the decision of the D.H.O. be reversed in the present case.

Date this 6 day of September 2013


SHAVNE E. TODD
Petitioner prose

CC:

My Name SHAYNE E. TODO
Address C.O.C.F. P.O. BOX 550
City, State, Zip GUNNISON, UT 84634
Phone (801) 545-5513
E-mail (801) 545-5726

I am the ☒ Plaintiff/Petitioner

☐ Defendant/Respondent

☐ Attorney for the ☐ Plaintiff/Petitioner ☐ Defendant/Respondent and my
Utah Bar number is _____

In the ☒ District Court ☐ Justice Court of Utah

SIXTH Judicial District SANPETE County

Court Address P.O. BOX 219 MANTI, UT 84642

SHAYNE E. TODO

Plaintiff/Petitioner

v.

DENNIS SORENSEN WISDOM

Defendant/Respondent

Certificate of Service

Case Number X

Judge _____

Commissioner _____

I certify that I served a copy of MEMORANDUM IN SUPPORT (document name)
on the following people. I declare under criminal penalty of Utah Code Section 78B-5-
705 that this Certificate of Service is true and correct.

Person's Name	Method of Service	Served at this Address	Served on this Date
Attorney General Office 161	<input checked="" type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)	Attorney General 160 E. 300 S. S.L.L., UT 84114.	
(Other Party or Attorney) CAROL FRANK DEPUTY CLERK (Clerk of Court)	<input checked="" type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Electronic File	P.O. BOX 219 MANTI, UT 84642	

Person's Name	Method of Service	Served at this Address	Served on this Date
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		
	<input type="checkbox"/> Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Fax (Person agreed to service by fax.) <input type="checkbox"/> Email (Person agreed to service by email.) <input type="checkbox"/> Left at business (With person in charge or in receptacle for deliveries.) <input type="checkbox"/> Left at home (With person of suitable age and discretion residing there.)		

Date 9-6-2013

Sign here ►

Shayne E. Todd

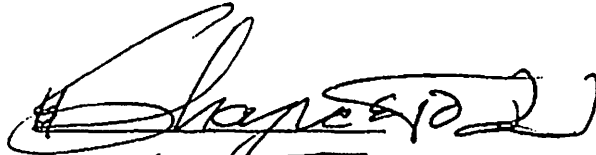
Typed or printed name

SHAYNE E. TODD
Petitioner - pro se

CERTIFICATE OF MAILING

I do hereby certify that a true and correct copy of the foregoing was mailed, postage pre-paid, to the Attorney General's Office, at 160 East 300 South, Salt Lake City, Utah 84114, on this 6 day of September, 2013 of SIXTH DISTRICT COURT.

SIXTH DISTRICT COURT
160 North main street
P.O. Box 219
Manti, Utah 84642


SHAYE TODD
Petitioner PRO SE

Shayne Todd #52731
Civ. F. P.O. Box 550
Gunnison, UT 84634
Prose

CENTRAL DISTRICT COURT

2014 FEB 20 AM 11:49

IN THE SIXTH JUDICIAL DISTRICT COURT - MAINTAINED AND FOR
SANPETE COUNTY, STATE OF UTAH

SHAYNE TODD,
Petitioner,

v.

DENNIS SORENSEN
Respondent.

REPLY MEMORANDUM IN
SUPPORT OF PETITIONER'S
MOTION FOR SUMMARY
JUDGMENT
CASE NO. 130600055

Judge: WALLACE A. LEE

Petitioner SHAYNE TODD, Prose an inmate at
the Central UTAH Corrections Facility (Prison Gunnison)
Respectfully submit this Reply memorandum
in support of his motion for Summary Judgment.

INTRODUCTION

Petitioner, an inmate at the C.U.C.F. ("Prison Gunnison"), brought this petition pursuant to UTAH Rule of Civil Procedure 65B(b). and (d). Under Rule 65B(b). Claims, is based on wrongful restraint on Personal Liberty (including Conditions of Confinement), and under Rule 65B(d). Claims is based on a wrongful use of judicial authority and failure to comply with duty of actions in a Disciplinary Hearing. He challenges a Disciplinary, which took place on May 2, 2013. He alleges a protected liberty interest that was violated to trigger a due process protections, and the sufficiency of the evidence to support the conviction and the appropriateness of the sanction. In

his opposition, the petitioner asserts he was found guilty of abuse or misuse of medication, despite the admissions from the Department of corrections;

- (1). He was denied the opportunity to call two witnesses, or have them present, i.e. phone call, or E-mail(s);
- (2). There was not sufficient evidence to support the conviction, and the appropriateness of the sanction herein;
- (3). He asked to have officer Francom and nurse Jackman testify personally at the hearing, because the reporting officer is likely to be an essential part of his defense, and was denied this opportunity;
- (4). There is evidence herein, nurse Jackman provided petitioner with more pills than necessary;

STATEMENT OF MATERIAL FACTS

Before addressing the allegations in the Respondent's supplemental reply memorandum response, or otherwise their answer, Petitioner asks, the Court to find that Petitioner response does comply with UTAH Rule of Civil Procedure 2(c)(3) B. He brought his petition pursuant to UTAH Rule of civil procedure 65B(6) and (6). which requires petitioner's memorandum

to contain a verbatim restatement of each of the moving party's facts that is controverted the opposing party shall provide an explanation of the grounds for any dispute, supporting by citation to relevant materials, such as affidavits or discovery materials. Petitioner's memorandum does (1) state the respondent's facts (2) explain why facts are disputed, or (3) contain citation not ~~relevant~~ relevant to materials. Further, petitioner has set forth additional facts "separately numbered" supported by citation, supporting materials, see Id. Therefore, petitioner respectfully request that the court find that there is a dispute of material fact, and that petitioner is entitled to judgment as a matter of law, in favor of the petitioner's relief, supporting his petition. Id.

In the alternative, petitioner addresses the supported factual allegations contained in his response.

(1). Petitioner requested witnesses to be called to his Disciplinary Hearing, to testify on his behalf, or by phone, or give outside presence, or even E-mails. Id.

Response: Respondent, disputed to whether or not petitioner requested such witnesses, to be present, or called by phone, or to be taken outside of his presents, or E-mails, "However" there is evidence to support that petitioner did in fact, ask - alternatively to call the witness to testify personally, or by phone, or outside

his presents, or by E-mail(s) herein. Id.
 (2). Thus - the petitioner requests was denied Id.

Response: petitioner's request was not granted, Captain Jones, did not accept the written statement(s). petitioner provided as being True and full evidence, in support of his defense, which would have brought forth a considerable different outcome if he did.

(3). Petitioner contends and asserts that at his Hearing held on May 2, 2013. He in fact, did request and asked to have officer Francom III The reporting officer and nurse Jackman, who Both witnesses the incident to be present by person, or by phone, or outside of his presents in favor of petitioner, as a supporting witness in his defense. This was denied by Captain Jones.

Response: Captain Kean Jones, says He does not specifically recall, if petitioner asked for officer Francom III and nurse Jackman to testify personally. "However" petitioner did assert here that he would like to bring forth witness Francom III nurse Jackman in person or by phone, or outside his presence, which is in compliance with (Doc - policy). It would not overburden the prison, if reporting officer witnessing incident, was personally were available, or by ~~phone~~ phone, outside, of "Presents" Reaching Correctional Goals)

Respondent's contend and assert, at the May 2, (4) 2013, Hearing, petitioner asked and requested to show and provide for the record here of two written Affidavits, and statements, to present documentary Evidence for his defense that statements, by nurse Jackman that it was not intentional. This was the only request - granted by Captain Jones. Id.

Response: Disputed, there is no Evidence to support that testimony from "Two witnesses", in addition to the "Two witnesses statements" offered by petitioner, were allowed, or, accepted in his defense, to support a non-guilty, by petitioner, as will be discussed in his argument it is material, if petitioner attempted to offer testimony from additional witnesses, because statements petitioner attached to his Petition and provided at his disciplinary Hearing, on behalf of his defense, should not have been rejected by the Hearing Captain Jones, if officers statements are considered testimony, then it is clear that petitioners statements from inmate witnesses are also (Testimony here in. Id.)

(5) petitioner contends that he testified on his own behalf, at this Hearing, and he pled not guilty to the charges against him, under the notice of B-13, for Abuse, or misuse of medication and he further contends that he did not violate any specified rule by the institutional rule or Policy, by his actions here in. Id.

Response: though Respondent, does not dispute that petitioner testified on his own behalf, and provided Captain Jones with two - Affidavits of persons who witnesses the incident in question herein, or the fact petitioner pled not guilty to the charge B-13 disciplinary violation. However the Respondent's dispute within their assertion that petitioner did in fact violated this rule, but they do not support that there was any evidence presented at the disciplinary hearing supporting this finding, and that the petitioner did violate this rule under abuse / misuse of medication. Here petitioner will explain more in his supplemental declaration attached herein, AS Exhibit (A) Todd's Dec.

(6). This incident was an "accident," and not done intentionally on petitioner's part. Id.

Response: undisputed.

(7). Respondent argues, though their reply even though it is possible for medication to fall accidentally, nurse Jackman's written statement - excludes, that possibility in this case, incident circumstances. Id.

Response: Disputed. It is clear here that the possibility is clear, that medication could have clearly fallen accidentally, and to accept nurse Jackman's statement, excluding petitioner's statement and explanation of clear possibility, shows clear prejudice, because of nurse Jackman's job position that's above the petitioners.

Respondent, assert, petitioner did not ask for a (8). continuance at his disciplinary hearing, or otherwise indicate, he was unable to proceed.

"Second" Respondent's, assert, that Captain Jones had no obligation to investigate petitioner's claim's, even if petitioner had asked him for such a continuance to do so. Id.

Response: Disputed, petitioner did in fact asked for a continuance at his disciplinary hearing and "second" it is pertinent for Captain Jones to reach some correctional goals herein, as well as find out whether, or not, in such a case, as this, was a proper dose of medication given to find out whether there truly was any abuse provided, nor obvious showing of abuse / misuse of known medication, under the stated circumstances.

(9). Here petitioner, was not aware at any-time of extra medication, because he picked far-pills in his mouth as required of me, until Jackman said: "derogatorially" pick up the pill, pick up the pill on the ground. petitioner is only to have or receive (2) Neurotin, (1) Ultram and (1) Wellbutrin, for his AM morning dose pill one doses, Id.

Response: This allegation is very material in this case and incident, do to the facts, petitioner being provided medication outside of regular doses.

It's clear, showing herein, a deficiency in nurse Jackman's "job obligation" and clear mistake on his part, which takes away the burden from petitioner, because it's very clear

that there is no-guilt on petitioners part for Abuse or misuse of his medication under the stated circumstances herein.

(10). Here for petitioner's PM night pill-line does, he claims i.e., he gets (2) neurotin (2) ultram and (No-Wellbutrin) Id.

Response: This allegation is very-material.

(11). Respondent alleges, petitioner did not request a continuance and Captain Jones, did not deny such a request herein. Id.

Response: Disputed. petitioner, did request a second continuance, and Captain Jones denied this stated request.

(12). There is, further supporting evidentiary - support that such request, was denied, and a written report from officer Bruce Francom ~~is~~ that the hearing officer Captain Jones, considered this written report only in reaching his decision in this case, where the reporting officer stated he saw "Two oval white pills", meaning he saw "Two ultrams tablets in petitioner's mouth in which he is only - to - get - one oval white pill tablet does, not "Two oval white pills" this morning AM pill-line incident April 5, 2013 Id.

Response: Thus - allegation is very-material. because see response to factual allegations in Paragraph Line nine, (9) herein.

Wherefore, if the officer(s) reported he seen (13). and saw "Two oval white pills" "Two oval yellow pills", and a round white pill, petitioner then picking the one up and swallowing it, after it was dropped then ordered to take it by nurse Jackman, Then, "there can be little doubt herein, that petitioner was given the wrong does and then forced to take such a does and did not go against any rule or policy for case of Abuse/misuse of meds. Id

Response: This allegation is very - material, Again (see) response to factual allegations herein Paragraph Line nine (9) herein.

Respondent, Argues this allegation is legally (14). immaterial, and that the assertion, is not whether petitioner, was required only to show prison personnel that all the appresist does and pills in his mouth were gone, but also the other pill as well is incorrect and plainly not true. Id

Response: petitioner, showed his mouth with pills in them, including the pill, he was forced to take outside of current perscription does, which in reaching Correcational Goals, and that of policy - is - all that's required herein of petitioner. Therefore no - Abuse / misuse is presented by the petitioner in this case and incident under the stated circumstances, (per policy).

(15). The reporting officer Bruce Francson the incident report IR-2 Further stated med tech Jackman

told petitioner, now pick the pin up off the ground and taste it. Petitioner then quickly bent over and picked it up off the floor and put it in his mouth and swallowed it. I.D.

Response: undisputed,

(16). neither Francum^{III}, or Jackman testified in person, or by phone, or outside of petitioners' presents, or any E-mail question(s). Instead this written statement(s) from both them were considered, by Captain Jones, in this case and incident. I.D.

Response: Because of this outcome herein petitioner's case and incident, He suffered a guilty finding and all his medication(s) were taken in a form of punishment and kept longer in a max facility classification unit, and petitioner was punished harshly and unconstitutionally violating his rights, and showing clear abuse of description herein by (WDC - I.D.H.O.)

Respondent(s).

ARGUMENT

"A summary judgment movant must show both that there is no material issue of fact, and that the movant is entitled to judgment as a matter of law." or vis v. Johnson, 2008 UT 2, ¶10, 177 P.3d 600. The undisputed facts in this case, incident does not only demonstrate that petitioner is entitled to judgment as a matter of law."

(A).

PETITIONER DID NOT RECEIVE ADEQUATE, DUE PROCESS IN THIS CASE, NOR DID HE RECEIVE FULL DUE PROCESS IN THIS CASE AND INCIDENT HE WAS ENTITLED TOO.,

Petitioner asserts, he was denied the opportunity to bring forth witnesses, or provide Supporting Statements, and was denied the opportunity to have Both officer Franconia, and nurse Jackson's testify personally, or by phone, or outside his presence, or any E-mail question(s) to them at the Disciplinary Hearing. Additionally, Petitioner claims, he requested a continuance so the Hearing officer could investigate this matter further, and his request was denied. Herein petitioner's claim(s) remain viable and holding merit.,

"

"

* First, petitioner, asserts, that he was denied an opportunity under the circumstances, to call witnesses, or to have a continuance, showing factual support. The record shows petitioner was allowed to give written statement(s) from two-witnesses but those statement(s), were clearly not considered by the hearing officer. Additionally the evidence in the record clearly shows petitioner did not intentionally commit the act, or get a requested continuance, after requesting such a continuance herein.

"

"

Second, The procedural right(s) a person is entitled under the Due Process clause, depends on the circumstance (see) Labrum v. UT State Bd of Pardon,

870 P.2d 902, 911 (UTAH 1993). The procedural rights, an inmate is entitled in the context of a disciplinary hearing are the following: The right to receive (1), advance written notice of disciplinary charges, (2), when appropriate, an opportunity to "call witnesses, and present documentary evidence in his defense," and (3), a written statement by the factfinder of the evidence relied on and the reason for the disciplinary action... "Wherefore," in order to meet the requirements, of due process in a disciplinary hearing findings, must be supported by at least "some evidence," in the record. Here petitioner contends, under the known circumstances, and the law is clear, and the procedures herein this case, were "not sufficient" to comply with the "minimal due process," required at a disciplinary hearing, let alone, adequate due process, because the petitioner, was not "allowed to offer testimony, and present 'some evidence' in his own defense herein." petitioner, further contends he has suffered a wrongful restraint on his personal liberty because, of the circumstances in this case and incident, and the rules of GSB (b), and (d). He was improperly found guilty of abuse/misuse of medication, under the facts and stated circumstances herein, and the hearing officers decision of the guilty finding was not made properly as to the facts and the evidence of the case, and the petitioner, was not fairly allowed to put on a defense such a case and the prison did not, even follow its own regulations, and (CDC-policy) for a guilty finding in this case and incident.

The petitioner, challenges the sufficiency of the evidence, to support the conviction, and the appropriateness of the sanction, and that it did the petitioner, under the circumstance, in fact violate this rule, when taking and swallowing all the medication given... "Emphasizing" that it was not intentional, and caused by nurse Jackson providing petitioner, with more pills than necessary. These issues and facts were not explored and very significant, to the incident at hand in this case, i.e.,

Under the constitution of the United States a state agency is required to give a person due-process of law, before depriving them of life, liberty, or property. (see) In re SA, 2001 UT App. 307 P 12. 37 P. 3d 1166. The state Prison, must give an inmate due process, before taking them away, and such a disciplinary action effects, an inmate's liberty interest; Triggering the demands of due process. Here the petitioner prose-litigant is entitled to every consideration that may reasonable be indulged. (see) Allen v. Friel, 2008 UT 56 P 11. 174 P. 3d 203.

Petitioner, is entitled to relief, if the sanction violates his constitutional right (see) Burlett v. Holden, 835 P. 2d, 989, 991 (UTAH Ct. App. (1992)). (Problems) concerning, or arising out of internal prison administration, will be addressed, by the courts with reluctance, and upon a showing of a known violation of important right(s). (internal citations and quotations omitted).

Here in Wolff v. McDonnell, 418 U.S. 539, 555 (1974), while the reason for denying a witness, need not be part of the hearing record, but if the said petitioner challenges the denial in court, the prison officials must provide a written, or oral explanation of the denial "logically related to preventing, undue hazard to institutional safety, or correctional goals." (See) Porter v. Reel, 471 U.S. 491, 497 (1985). As stated in Wolff, the inmate should be allowed to call witnesses, and present documentary evidence in his defense provided, there exists no undue hazard to the institutional safety, or correctional goals. The charged inmate is usually required to provide a written request for a witness, prior to the hearing - describing what he expects them to say if they are called. The decision to grant or deny a witness request should be made in the record. (Citation admitted). Here it is shown Captain Jones stated (quoted from his own admission) does not "specifically recall" if petitioner asked for officer Francom III, and nurse Jackman to testify - personally. This fully, and accordingly shows the relevance and that petitioner is within the guidelines that Captain Jones, is clearly "mooching the cart", and showing such abuse, by skirting around a standard, that's intact, put into place to insure, a correctional goal, as well as to uphold constitutional right of those afforded in a disciplinary hearing here within...

second, An accused inmate is entitled to an opportunity to be heard herein... The Court's

have generally recognized that a hearing is a fundamental to the concept of due-process. It is one of the procedural safeguards to which an inmate, is intitled to, when any action is taken against him, and due-process safeguards are very necessary, when due-process rights that are created by statute, state regulation, or express constitutional provisions are threatened.

The Supreme Court, recognized, that a Prison Disciplinary Hearing is an effort at an orderly attempt to arrive at the truth. It is not a formal Court proceeding. A Disciplinary Hearing combines two functions in the proceeding. (The fact finding process, and the correctional process.)

The fact finding process involves a determination of the "Truth of the allegations," that a specified institutional rule, had been violated, that is, did the petitioner herein actually violate this Rule(?) Related to due-process requirement, A Rule, or regulation, the violation of, which can result in a disciplinary proceeding, must apprise the inmate of the proscribed conduct. The usual rule is that a statute, or regulation, must "give a person of ordinary intelligence a fair-notice that his contemplated conduct is forbidden. The underlying principle is that no-man shall be held criminally-responsible for conduct, which, he could not reasonably understand to be proscribed. (see) Laaman v. Helgemore, 437 F.

Supp. 269.321-322 (D.N.H. 1977). (citing) United States v. Harris, 347 U.S. 612, 617, 74 S. Ct. 808, 812 98 (Ed) 789 (1954) The Laaman Court also refers to

to Packer v. Levy, 417 U.S. 733, 757, 94 S. Ct. 2547, 41 LEd2d 439 (1974).

Finally, petitioner contends prison officials are prohibited from "do what-ever-they want." The due process right, that remain herein for the petitioner in this case and incident, are powerful right(s), petitioner, was aware that if he did not request the presence of the reporting officer, the disciplinary officer is allowed to take, their written statements, as true without even the benefit, of him questioning them. Thus, is an essential part of his defense to have the presence, or phone call or E-mail, or outside his presence, of the reporting officer to question him, and this was not allowed herein. petitioner asserts here, a strong argument is available to show the charge should be dismissed, likewise, such a failure to provide, a reporting requested officer may be a strong argument for a "reversal" on administrative appeal, after a guilty finding.

It is clear, though outside this argument the stance in which, is to be upheld is blatantly herein, being taken, as nothing more than an attempt, by respondent's to gain a favorable outcome. Because they believe their position, to be that to, which is a higher position than, that of the petitioner, in this case and incident, just, because he is incarcerated.

(See) Freeman v. Carroll, No. 12-1057, 2012 WL

6604559 (10th Cir. Dec. 19 2012) (Quoting Superintendent Mass. Corr. Inst. Walpole v. Hill, 472 U.S. 445, 454, (1985)); (In Addition the minimum requirements of procedural due-process, demand, that the finding of the Prison Disciplinary board are supported, by "some Evidence", in the record."

Here, it is clear, that if witnesses, were allowed, and statement(s), taken in a "proper-light", the "some Evidence, would "swing in favor of the petitioner as well..." There is no dispute, petitioner received advance written notice of the charges, and a written statement from the hearing officer of the evidence relied on, and the reason for the disciplinary action B-13 Abuse / misuse of medication. [His statement was vague] (own citation omitted). He simply says that enough evidence was presented, but fails to provide here what evidence - led to that conclusion. petitioner takes issue with the opportunity he did not have to call any witnesses, including the witnesses - against him. As discussed. There is evidence petitioner was denied, the opportunity to present witnesses and their testimony, being it is the burden of the petitioner, to show prejudice. (Herein)

It would be facile, to consider not seeing the plain "Truth of Prejudice herein," because of the advantage of the responder's position, to that of the petitioner's position in this case and incident..."

The Respondent's Argues only Evidence, which Petitioner has provided in support of his case and claim(s), are written statement(s) from inmate(s) he provided at his hearing herein, and after the incident herein, of this case, when such petition was filed.

Inmate(s) (1). Kurtis Anderson (2). Jerome William (3). Jacob Salgado (4). Sedric Johnson; As the same Evidence rule applies in behalf of the respondent.

Here, the question is - The standard one way because the petitioner herein, would have to argue no! The rule is clear, in to which the standard, into, which is to be followed, therefore, the same standard rule applies for the petitioner, as well as the Respondent in this case and incident under the known facts and circumstances, (of some Evidence)

(b). DUE PROCESS REQUIREMENTS FOR PRISON DISCIPLINARY HEARINGS:

Petitioner, contends, the Phrase Due-process of Law, is found also in the fifth and Fourteenth Amendment's to the United States Constitution. The Supreme Court indicates that Due-process, has two aspects; (Substantive and procedural). The — Substantive aspect of Due-process involves the Fundamental right(s) of an individual, such as, Life and liberty, which are protected

from government action. The procedural aspect of Due-process, deals with the means by which a government action can effect the fundamental rights of an individual.

Here in this case, only after, certain "fair procedures," are followed can the government act to deprive an individual of a fundamental right.

In *Sandin v. Connor*, 515 U.S. 472 (1995). The Due process right apply, when a "recognized liberty interest protected by due process. Due process rights apply, when a "recognized liberty interest" is at stake like herein, meaning where the government is attempting to deny the petitioner, life, liberty, or property. — Normally, a state's mandatory regulation would create an expectation here of a liberty interest, that the state will not do the petitioner bad things, without first doing the due process. *Sandin*, at 484; policy is said to be the standard to which is being followed. "However," at any-time, policy goes against constitutional law, it renders itself inadequate and without merit. — prison disciplinary procedures give rise to a protected liberty interest requiring the procedural protections envisioned by the fourteenth Amendment. Because, the prison disciplinary process does create a constitutionally protected liberty interest, he can challenge the sufficiency of those procedures, under the due process

Clause herein, since petitioner's medications were then also discontinued indefinitely all pills, by the C.U.C.F. - provider in this case for Abuse / and diversion of said - medications)... petitioner has derived Abuse or misuse of these medications, which he still needs, and he has been suffering "Deliberate indifference" to his Three serious medical needs "endangering his Life" alleged that any delay can cause irreversible damage to his mental health needs and possible death" because the petitioner, knows of other prisoners here at C.U.C.F. who have died over being taken off their needed health care medications. This is showing Substantial harm, and is in fact unnecessary rigor, and Cruel and unusual punishment, when following (CDC - Policy) (see) Bott v. Deland, 922 P.2d 732, 737 (UTAH 1996);

Even the Tenth Circuit, has held that the existence of an improper motive for disciplining a prisoner, with interference that results in to a constitutional right. (see) Smith v. Marshner 899 F.2d 940, 947 (10th Cir. 1990).

CONCLUSION

For the foregoing reasons, petitioner respectfully request, that Respondents, motion for summary judgment, should be denied. Further he prays that the Court grant his Summary Judgment as well as reverse the discipline imposed on the petitioner herein.

PETITIONER'S VERIFICATION UNDER OATH

STATE OF UTAH)

:SS

SANPETE COUNTY)

I the undersigned petitioner, declare under penalty of perjury that the information I have provided in this reply memorandum in support of petitioner's motion for summary judgment that this petition is True & correct Executed on this 14th day of February 2014.

Preliminary
Injunction

H. Shapner
SHAPNER TOPP
Petitioner pro se

CERTIFICATE OF MAILING
Proof of Service

I certify that I mailed a True and correct copy of the foregoing Reply memorandum in support of petitioner's motion for summary judgment, postage prepaid on this 14th day of February 2014 to the following:

Amanda M. Montague (9941)
Attorney for respondent
P.O. Box 140812
160 East 300 South
S.C.C. UT 84114-0812

H. Shapner
SHAPNER TOPP

SANPETE COUNTY COURT
Room 160 North
P.O. Box 219
Mantle, UT 84642

Addendum (G).

~~EXHIBIT 2~~



Utah Department of Corrections

Page 1 of 1

DISCIPLINARY FINDINGS FORM MD-2 Hearing Type: ORIGINAL HEARING

Incident Case # 272950
UDC Discipline Case # 676712

Name TODD, SHANE EUGENE Offender # 52731 USP # 19529
Hearing Date and Time 05/02/2013 09:27 Hearing Location CUCF HICKORY

<u>Charges</u>	<u>Pleas</u>	<u>Findings</u>	<u>Amended To</u>	<u>Pleas</u>	<u>Findings</u>
1. B13	NOT GUILTY	GUILTY			

Findings:

Inmate Shane Todd plead not guilty to B13- Abuse/Misuse of Medication.

Finding: Guilty

This finding is based on the officer's report.

Based on the above findings I assess:

10 DAYS PUNITIVE ISOLATION 05/02/2013 TO 05/12/2013

Hearing Officer
Keane Janes

Electronic Verification
Keane Janes

Date
05/14/2013

Addendum (H).

Filed by petitioner / Appellant
Prose,

Mr. Todd unclear, by respondents /
Appellees, petitioner would need
clarification of procedure history
of the case and pursuant to Rule
24(a)(9), petitioner's Brief cites
to citation to the record and also
his legal arguments cites to trial
court records the trial court's decision
statement.

- * Explains challenges to the trial court's
decision and also offers legal analysis
Mr. Todd's Brief is more than sufficient
as a prose litigate to allow this court
to review his claims.

~~EXHIBIT~~

SIXTH JUDICIAL DISTRICT-MANTI
SANPETE COUNTY, STATE OF UTAH

SHAYNE TODD vs. DENNIS SORENSEN

CASE NUMBER 130600055 Post Conv Rel NonCap

CURRENT ASSIGNED JUDGE
WALLACE A LEE

PARTIES

Petitioner - SHAYNE TODD

Respondent - DENNIS SORENSEN

Represented by: SHAREL S REBER

Represented by: AMANDA N MONTAGUE

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	360.00
	Amount Paid:	1.00
	Credit:	0.00
	Balance:	359.00

REVENUE DETAIL - TYPE: COMPLAINT - NO AMT S

Fee Waiver Status -

	Amount Due:	360.00
	Amount Paid:	1.00
	Amount Credit:	0.00
	Balance:	359.00

CASE NOTE

PROCEEDINGS

09-11-13 Case filed
09-11-13 Judge WALLACE A LEE assigned.
09-11-13 Filed: Petition For Extraordinary Relief
09-11-13 Filed: Memorandum In Support Of Petitioner's Petition For
Extraordinary Relief
09-11-13 Filed: Application To Proceed In Forma Pauperis, Supporting
Documentation And Order
09-11-13 Filed: Affidavit Of Impecuniosity
09-11-13 Filed: Motion For Appointment Of Counsel
Filed by: TODD, SHAYNE
09-18-13 Filed order: Request For Inmate Accounting

Judge WALLACE A LEE

Signed September 18, 2013

10-18-13 Filed: Petitioners Notice of Supplemental Documentation in Support of Memorandum filed for Seeking Extraordinary Relief

10-21-13 Filed: Inmate Accounting

10-22-13 Filed: Request to Submit for Decision for Appointment of Counsel

10-24-13 Note: Copy of the court docket mailed to the Petitioner as per his request.

10-31-13 Note: Tracking on request to submit to start when filing fee has been paid.

10-31-13 Filed order: Determination Of Requirement To Pay Filing Fees

Judge WALLACE A LEE

Signed October 30, 2013

11-05-13 Filed: Request For An Expedited Review, Over The Initial Filing Fee, And Review Of The Action Merits, Seeking Extraordinary Relief

Filed by: TODD, SHAYNE

11-06-13 Minute Entry - RULING

Judge: WALLACE A LEE

Petitioner filed a Request for Expedited Review, Over the Initial Filing Fee, And Review of The Action Merits, Seeking Extraordinary Relief.

The Court declines to engage in any expedited review of this case, but will follow the rules for extraordinary relief in Utah Code Annotated Section 65B(b). The Court has determined the amount of the initial filing fee which Petitioner must pay.

The Court will not proceed to review of this case until the initial filing fee is paid.

The Request for Expedited Review is DENIED.

Date: _____

Judge WALLACE A LEE

11-06-13 Filed order: Ruling

Judge WALLACE A LEE

Signed November 06, 2013

11-15-13 Filed: Motion Request For Clarification Of Ambiguous Ruling/Order

Filed by: TODD, SHAYNE

11-26-13 Filed: Motion Requested and Hearing/Issue and Injunction Order

Filed by: TODD, SHAYNE

11-27-13 Minute Entry - MEMORANDUM DECISION AND ORDER

Judge: LEE, WALLACE A

Petitioner filed a Motion Request for Clarification of

Ambiguous Ruling/Order and a Motion Requested and Hearing/Issue and Injunction Order. There is no merit to either motion and they are both DENIED.

The Court finds nothing ambiguous about any order previously issued.

The Court's Request for Inmate Accounting filed 18 September 2013 does contain the wrong case number in the header on the second page, but the case number on the first page is correct and there is no indication the accounting received by the Court is for any other account than that of Petitioner. In addition, Court records show that no funds have been received for the required filing fee from the department of corrections.

Date: _____

Judge LEE, WALLACE A

11-29-13 Filed order: Memorandum Decision and Order

Judge WALLACE A LEE

Signed November 27, 2013

12-02-13 Filed: Letter (Brief)

12-02-13 Filed: Letter from Shayne Todd

12-04-13 Filed: Complaint No Amount

12-04-13 Fee Account created Total Due: 360.00

12-04-13 COMPLAINT - NO AMT S Payment Received: 1.00

12-06-13 Filed: Petitioner's Response to Court's Memorandum
Decision/Order

12-17-13 Filed: Letter From Todd Shayne Requesting Docket

01-03-14 Minute Entry - RULING

Judge: LEE, WALLACE A

Petitioner filed a Petition for Extraordinary Relief under Rule 65B(b) and (d).

The Clerk of the Court is directed to serve a copy of the petition and a copy of the supporting memorandum in this case upon Respondent by mail.

Respondent shall answer or otherwise respond to the petition no later than 30 days from the date the petition and memorandum are placed in the mail.

Date: _____

Judge LEE, WALLACE A

01-03-14 Filed order: Ruling
Judge WALLACE A LEE
Signed January 03, 2014

01-09-14 Filed: Appearance of Counsel

01-09-14 Filed: Motion for Enlargement of Time
Filed by: SORENSEN, DENNIS

01-09-14 Filed: Order (Proposed) - Order for Enlargement of Time

01-09-14 Note: Order for enlargement of time deferred until 1/24/2014
for response time to run.

01-14-14 Filed: Request For Clarification Of Ruling/Order Noted January
3, 2014

01-22-14 Minute Entry - MEMORANDUM DECISION AND ORDER
Judge: WALLACE A LEE
Petitioner filed a Request for Clarification of Ruling/Order
Noted, January 3, 2014. This request essentially asks the Court to
rule on Petitioner's Motion for Appointment of Counsel filed 11
September 2013.
This motion has never been submitted for decision until now.
The Court treats Petitioner's Request for Clarification as a notice
to submit on the Motion for Appointment of Counsel.

Petitioner's Motion for Appointment of Counsel is DENIED. This is
a civil case and there is no provision allowing appointment of
counsel in a civil proceeding under Rule 65(B) Utah Rules of Civil
Procedure.

Date: _____

Judge WALLACE A LEE

01-22-14 Filed order: Memorandum Decision and Order
Judge WALLACE A LEE
Signed January 22, 2014

01-23-14 Filed: Appearance of Counsel/Notice of Limited Appearance -
Appearance of Counsel

01-23-14 Filed: Motion for Summary Judgment
Filed by: SORENSEN, DENNIS

01-23-14 Filed: Memorandum in Support of Respondents Motion for Summary
Judgment

01-23-14 Filed: - Declaration of Keane Janes

01-24-14 Filed order: Order - Order for Enlargement of Time
Judge WALLACE A LEE
Signed January 24, 2014

02-05-14 Filed: Petitioner's Objections To Report And The
Recommendations By The Respondents. Noted: 23, January 2014

02-07-14 Filed: Memorandum Support of Petitioners' Motion for Summary
Judgment

02-07-14 Filed: Motion for Summary Judgment
Filed by: TODD, SHAYNE
02-10-14 Filed: Reply Memorandum in Support of Respondents Motion for
Summary Judgment
02-10-14 Filed: - Supplemental Declaration of Keane Janes
02-10-14 Filed: Request/Notice to Submit
02-12-14 Filed: Motion For Summary Judgment
Filed by: TODD, SHAYNE
02-12-14 Filed: Memorandum In Support Of Petitioner's Motion For Summary
Judgment
02-14-14 Filed: Motion For Enlargement Of Time
Filed by: TODD, SHAYNE
02-14-14 Filed: (Proposed) Order For Enlargement Of Time
02-19-14 Filed: Objection to Petitioners Motion for Enlargement of Time
02-19-14 Filed: Motion - Respondents Motion for Enlargement of Time
Filed by: SORENSEN, DENNIS
02-19-14 Filed: Order (Proposed) - Order Granting Respondents Motion for
Enlargement of Time
02-19-14 Minute Entry - MEMORANDUM DECISION AND ORDER
Judge: WALLACE A LEE
Respondent filed a Motion for Summary Judgment. Petitioner filed
an objection in response to the motion. Respondent filed sa reply
memorandum, then submitted the motion for decision on 10 February
2014.

On 14 February 2014, Petitioner filed a motion for enlargement of
time to allow him to file another opposing memorandum.

Petitioner's motion for enlargement of time is DENIED. The Utah
Rules of Civil Procedure allow only for one responsive memorandum.
No other responsive memorandum is allowed.

Date: _____

Judge WALLACE A LEE

02-19-14 Filed order: Memorandum Decision and Order
Judge WALLACE A LEE
Signed February 19, 2014
02-19-14 Filed order: Order - Order Granting Respondents Motion for
Enlargement of Time
Judge WALLACE A LEE
Signed February 19, 2014
02-20-14 Filed: Request to Submit For Decision
02-20-14 Filed: Reply Memorandum In Support Of Petitioner's Motion For
Summary Judgment
02-20-14 Filed: (Second Request) Motion For Appointment Of Counsel
Filed by: TODD, SHAYNE

02-20-14 Filed: (Proposed) Order For Appointment Of Counsel
02-20-14 Filed: Petitioner's Response And Memorandum In Support Of His
Response To Respondent's Motion For Summary Judgment Noted 23,
2014 January
02-20-14 Filed: (Proposed) Order of Garnishment
02-24-14 Filed: Letter From Shayne Todd Requesting Copies
02-26-14 Filed: Opposition to - Memorandum in Opposition to Petitioners
Motion for Summary Judgment
02-26-14 Filed: Affidavit/Declaration - Declaration of Steven Lund
02-26-14 Filed: Return of Electronic Notification
02-27-14 Filed: Objection to Respondent's Motion for Enlargment of Time
02-27-14 Filed: Petitioner's Opposition to Respondents Objection to
Petitioners Motion for Enlargment of Time
02-28-14 Filed: Petitioner's Motion For Clarification Of Procedure
History Of The Case
Filed by: TODD, SHAYNE
03-03-14 Filed: Letter from Shayne Todd
03-05-14 Filed order: Order Of Garnishment
Judge WALLACE A LEE
Signed March 05, 2014
03-17-14 Filed: Supplemental Declaration Of Shayne Todd, Petitioner
03-17-14 Filed: Reply Memorandum in Support of Petitioner's Motion for
Summary Judgment
03-18-14 Filed: Letter (brief)
03-18-14 Filed: Request to Submit
03-18-14 Filed: Request/Notice to Submit
03-18-14 Filed: Return of Electronic Notification
03-19-14 Filed: Motion for Preliminary Injunction
Filed by: TODD, SHAYNE
03-19-14 Filed: Motion for In Rem Action
Filed by: SORENSEN, DENNIS
03-20-14 Filed: Objection to Motion For In Rem Action
03-20-14 Filed: Objection to Petitioners Motion for Summary Judgment
Filed with the Court on February 7, 2014, or, Alternatively,
Request to File an Opposition to the Aforementioned Motion
03-20-14 Filed: Return of Electronic Notification
03-25-14 Filed: Letter from Shayne Todd (document request)
03-25-14 Filed: Request to Stay Consideration of Motion for Preliminary
Injunction
03-25-14 Filed: Return of Electronic Notification
03-26-14 Filed order: Ruling on Motions
Judge WALLACE A LEE
Signed March 26, 2014
03-26-14 Filed: Certificate of Notification (Second Request) Motion for
Appointment of Counsel
03-26-14 Filed: Certificate of Notification (Motion for Preliminary
Injunction)
03-26-14 Filed: Certificate of Notification (Letter dated March 18,
2014)

03-26-14 Filed: Certificate of Notification (Petitioner's Motion for Clarification of Precedure History of the Case
03-28-14 Filed: Memorandum in Opposition to Repondent's Objection's to Petitioner's Motion for Summary Judgment Filed with the Court on February 7, 2014
03-28-14 Filed: - Request for Certification or Schedule
03-28-14 Filed: Return of Electronic Notification
03-31-14 Filed: Reply Memorandum In Support Of Petitioner's Motion And Request For In Rem Action
04-01-14 Filed: Letter Requesting Copies
04-01-14 Filed: Notice Of Claim Of Unconstitutionality Of Utah Code Ann R156-37-603, And Institutional Operations Division Manual FO 0/06/B13
04-01-14 Filed: Memorandum In Support Of Petitioner's Motion Of Notice Of Claim Of (Both) Unconstitutionality Of Utah Code Ann R156-37-603, And Institutional Operations Division Manual FO 0/06/04 (B13)
04-01-14 Filed: - Response to (1) Petitioners Second Request for Appointment of Counsel, (2) Petitioners Motion for Clarification of Procedural History of the Case, and (3) Petitioners March 18, 2014 Letter
04-01-14 Filed: Return of Electronic Notification
04-02-14 Minute Entry - RULING ON CASE MANAGEMENT

Judge: WALLACE A LEE

Respondent has asked the Court to require Petitioner to file a certification or schedule of motions he intends to file. The Court declines to do so.

However, in order to prevent this case from languishing without final decision, and pursuant to the Court's authority to control case management, the Court has decided to impose a motion cutoff date.

Therefore, the Court fixes a period of 30 days from the date of this Ruling, or no later than 5 PM on 2 May 2014, as a motion cutoff date and time. Any motions either side would like the Court to consider must be filed by that date and time.

Once that date and time have passed, no further motions may be filed, and any motions not filed by that date and time shall be considered waived.

After 5 PM on 2 May 2014, and after all extant motions have been briefed, either party may submit all motions for decision.

Because the Court is concerned Respondent is not timely receiving copies of Petitioner's motions and other materials, the Court directs the clerk to mail copies of all motions and other documents filed by Petitioner to counsel for Respondent.

Date: _____

Judge WALLACE A LEE

04-02-14 Filed order: Ruling On Case Management
Judge WALLACE A LEE
Signed April 02, 2014

04-02-14 Filed: Certificate Of Mailing Requested Copies

04-02-14 Filed: Motion - Cross Motion for Summary Judgment on the Claims
Petitioner Raises in his February 7 and February 12, 2014
Motions for Summary Judgment
Filed by: SORENSEN, DENNIS

04-02-14 Filed: Memorandum in Opposition to (1) Petitioners February 7,
2014 Motion for Summary Judgment and (2) Motion for Preliminary
Injunction and Memorandum in Support of Cross Motion for
Summary Judgment

04-02-14 Filed: Affidavit/Declaration - Declaration of Dr. Richard
Garden

04-02-14 Filed: Return of Electronic Notification

04-09-14 Filed: Petitioner's Second Motion Request For Preliminary
Injunction-Independent From First Already Filed Injunction
(Medical Services)
Filed by: TODD, SHAYNE

04-09-14 Filed: Opposition Response To (1) Respondent's Answer To
Petitioner's (2) Second Request For Appointment Of Counsel (3)
His Motion For Clarification Of Procedural History (4)
Petitioner's March 18, 2014 Letters

04-09-14 Filed: Motion Request To Allow Petitioner To Include In The
Original Petition To Name, Proper Respondent's Personally
Liable For Harm
Filed by: TODD, SHAYNE

04-15-14 Filed: Opposition to (1) Petitioners Notice of Claim of
Unconstitutionality, (2) Motion to Request to Allow Petitioner
to Name Proper Respondents; and (3) Second Request for
Preliminary Injunction

04-15-14 Filed: Return of Electronic Notification

04-16-14 Filed: Reply Memorandum in Support of Petitioner's Motion for
Summary Judgment, Noted: (2-7-2014)

04-16-14 Filed: Supplemental Declaration of Shayne Todd

04-16-14 Filed: Cross Reply Memorandum in Support of Petitioner's Motion
for Preliminary Injunction Filed (3-19-2014)

04-22-14 Filed: Todd Shayne Request For Copies

04-23-14 Filed: Reply Memorandum in Support of Respondents Cross Motion
for Summary Judgment on the Claims Petitioner Raises in his
February 7 Motion for Summary Judgment

04-23-14 Filed: Affidavit/Declaration - Declaration of Jacob Romero

04-23-14 Filed: Return of Electronic Notification
04-23-14 **** PRIVATE **** Filed: Motion to Classify the Declaratio
04-23-14 **** PRIVATE **** Filed: Affidavit/Declaration - Declarati
04-23-14 **** PRIVATE **** Filed: Order (Proposed) - Order Classify
04-23-14 Filed: Return of Electronic Notification
04-23-14 Note: Order Classifying deferred to 5-7-2014
04-25-14 Filed: Cross Opposition Motion, and Objection Motion in
Opposing Respondent's Opposing Motion, to Petitioners Claim's
and Entitled, Requested Relief Noted:4-15-2014
04-30-14 Filed: Shayne Todd -Request For Copies
05-05-14 Filed: Request/Notice to Submit - Request to Submit Pending
Motions for Decision
05-05-14 Filed: Return of Electronic Notification
05-05-14 Filed: Supplemental Cross Reply, And Memorandum In Support Of
Petitioner's Motion For Summary - Judgment, And Injunction
Filed (2-7-14) And On (3-19-14) Herein
05-05-14 Filed: Exhibit (A) ✓
05-05-14 Filed: Exhibit A ✓
05-05-14 Filed: Exhibit B ✓
05-05-14 Filed: Exhibit 1
05-05-14 Filed: Exhibit 2
05-05-14 Filed: Exhibit 3
05-05-14 Filed: Exhibit 4
05-05-14 Filed: Motion to Strike Supplemental Cross Reply, and
Memorandum in Support of Petitioners Motion for Summary
Judgment and Motion for Preliminary Injunction Filed (2-7-14)
and on (3-19-14) Herein
Filed by: SORENSEN, DENNIS
05-05-14 Filed: Return of Electronic Notification
05-06-14 Filed: Request to Submit for Decision
05-06-14 Filed: Request for Copies

J. Frederic Voros, Jr
Presiding Judge

Gregory K. Orme
Associate Presiding Judge

James Z. Davis
Judge

Stephen L. Roth
Judge

Michele M. Christiansen
Judge

John A. Pearce
Judge

Utah Court of Appeals

450 South State Street
P.O. Box 140230
Salt Lake City, Utah 84114-0230

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Judges' Reception (801) 578-3950
FAX (801) 578-3999
Utah Relay 1-800-346-4128



Timothy M. Shea
Appellate Court Administrator

Lisa A. Collins
Clerk of the Court

July 8, 2014

SHAYNE TODD 52731
PO BOX 550
GUNNISON UT 84634

RE: Todd v. Sorensen

Appellate Case No. 20140593

Dear Shayne Todd:

Please be advised that the notice of appeal in this case has been filed with the Utah Court of Appeals. The case number is 20140593 and should be indicated on any future filings or correspondence.

Effective November 1, 2011, Rule 24(f) has changed to a Type-Volume Limitation and requires a Certificate of Compliance with Rule 24(f)(1). Please review the rule to ensure compliance with the rule change.

It appears that you will not have the assistance of an attorney in preparing papers for filing in this court. Enclosed is a pro se guide concerning appeal procedures. We hope it will be helpful to you in presenting your case. Please be aware that failure to file designated papers within the time limits established under the Utah Rules of Appellate Procedure may result in dismissal of your appeal.

Rule 11(e)(1) of the Utah Rules of Appellate Procedure requires that, within ten days of the filing of the notice of appeal, appellant must submit a transcript request for such parts of the proceedings as the appellant deems necessary.

Transcripts may be ordered on line by going to the court's web site at www.utcourts.gov. Under "Do", select Request a Transcript.

The State Transcript Coordinator, Crystal Cragun, may be reached at either (801) 578-3948 or crystalc@utcourts.gov.

Pursuant to Rule 21 of the Utah Rules of Appellate Procedure, copies of all papers filed with this court in connection with the appeal must be served on all other parties to the appeal. All papers filed must be accompanied by a certificate of service in the form of a statement of the date and manner of service, the names of the persons served, and the addresses at which they were served. All documents filed in this court must be served (mailed or hand-delivered) on the opposing party to allow the party an opportunity to respond. In turn, all papers filed by the opposing party must be served on you so that you may respond.

Be advised that it is your responsibility to notify this court immediately in writing if you have a change of address during the appeal process.

This court will permit documents that do not require a filing fee to be filed by email. The emailed document, which must bear the required signature, will be accepted as an "original" document until the true original and any required copies are received by the court. The original must be received by this court within 5 business days from the date of the transmission by email. If the original is not received within that period, the court will treat the email filing as void. An emailed filing is considered "received" when stamped by the clerk's office. The time for stamping is limited to regular office hours (weekdays, 8:00 a.m. to 5:00 p.m.). All risks associated with filing by email are borne by the sender. The email address for the Supreme Court is supremecourt@utcourts.gov and for the Court of Appeals is courtofappeals@utcourts.gov.

✱

The Docketing Statement and attachments, consisting of the original and two copies, is due within 21 days of the filing of the notice of in the trial court. Therefore, the docketing statement is due July 29, 2014.


As of May 15, 2008, pursuant to Utah Supreme Court Standing Order No. 8, any party filing a brief in the merits in the Utah Supreme Court or the Utah Court of Appeals is required to submit a courtesy copy of the brief on compact disc in **searchable PDF** format in addition to complying with the filing and service requirements stated in the Utah Rules of Appellate Procedure. Instructions for converting a document to searchable PDF format can be located on our website at:
http://www.utcourts.gov/resources/attorney/Convenience_Brief/instructions/Save_Document-PDF.pdf

Upon review of this Court's extension policy, parties should anticipate that effective June 1, 2014, after one stipulated extension permitted by Rule 26(a) Utah Rules of Appellate Procedure, upon the showing of good cause, each party shall be eligible to

move for one further extension. Further extensions will be granted only upon the showing of extraordinary circumstances, not including workload. Extensions will not be granted on reply briefs.

Please note, failure to perfect an appeal at any time during the appeal process may result in dismissal of the appeal.

Sincerely,


Breeanna Degarmo
Judicial Services Rep.

cc: SHAREL S. REBER
AMANDA N MONTAGUE
SIXTH DISTRICT, MANTI DEPT, 130600055

J. Frederic Voros, Jr
Presiding Judge

Gregory K. Orme
Associate Presiding Judge

James Z. Davis
Judge

Stephen L. Roth
Judge

Michele M. Christiansen
Judge

John A. Pearce
Judge

Utah Court of Appeals

450 South State Street
P.O. Box 140230
Salt Lake City, Utah 84114-0230

Appellate Clerks' Office (801) 578-3900
Judges' Reception (801) 578-3950
FAX (801) 578-3999
Utah Relay 1-800-346-4128



Timothy M. Shea
Appellate Court Administrator

Lisa A. Collins
Clerk of the Court

August 11, 2014

SHAYNE TODD 52731
PO BOX 550
GUNNISON UT 84634

RE: Todd v. Sorensen

Appellate Case No. 20140593

Dear Shayne Todd:

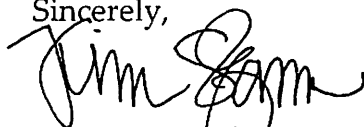
Within ten days after filing the notice of appeal, the appellant must submit a transcript request or a certificate that no transcript is needed.

Transcripts may be ordered on line by going to the court's web site at www.utcourts.gov. Under Online Services, select **Request a Transcript**.

The State Transcript Coordinator, Crystal Cragun, may be reached at either (801) 578-3948 or crystalc@utcourts.gov.

As of this date, this court has not received a request for a transcript or a certificate that no transcript is needed. Please be advised that appellant has ten (10) days from the date of this letter to correct this default. If appellant fails to do so, the appeal will proceed without benefit of a transcript.

Sincerely,


Kimberly Shafer
Judicial Assistant

*NOTE MY TRANSCRIPTS I'S
CART RECORD AND STAMPED
BY THE CLERK CART, FOR ADDENDUMS,
ENCLOSED ATTACHED TO THIS
REPLY BRIEF (A THROUGH G)*

cc: SHAREL S. REBER sreber@utah.gov
AMANDA N MONTAGUE amontague@utah.gov

J. Frederic Voros, Jr
Presiding Judge

Gregory K. Orme
Associate Presiding Judge

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Judge

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Timothy M. Shea
Appellate Court Administrator

Lisa A. Collins
Clerk of the Court

October 9, 2014

SHAYNE TODD 52731
PO BOX 550
GUNNISON UT 84634

RE: Todd v. Sorensen

Appellate Case No. 20140593-CA

Dear Shayne Todd:

The record (#130600055) on this appeal was filed in this court and may be withdrawn by the attorney or by a representative upon the written request of the attorney of record. The purpose of this letter, therefore, is to set the briefing schedule. A copy of the record index is enclosed. Please review the index at this time to ensure that the record is complete. Also, in your brief, please notify the court if your client is presently incarcerated.

Pursuant to Rules 13 and 26, Utah Rules of Appellate Procedure, the appellant's brief must be served and filed on or before **November 24, 2014**. This due date takes into consideration the three days mailing provision of Rule 22(d).

In an effort to further our goal of efficient administration of justice, effective immediately, the Court of Appeals will look unfavorably on extension requests that exceed the limits set forth in Rules 26(a) and 22(b) of the Utah Rules of Appellate Procedure. In the absence of extraordinary circumstances that do not include counsel's heavy workload, such requests will be denied.

Please Note:

Effective January 1, 2014, after the stipulated extension allowed by Rule 26(a) Utah Rules of Appellate Procedure, one motioned extension per side will be granted on a showing of good cause. Further extensions will be granted only on a showing of extraordinary circumstances, not including workload. Extensions will not be granted on reply briefs.

Effective January 1, 2015, after the stipulated extension allowed by Rule 26(a) Utah Rules of Appellate Procedure, one motioned extension per side will be granted on a showing of extraordinary circumstances. Further extensions will not be granted. Extensions will not be granted on reply briefs.

Parties are advised to refer to Rules 24, 26 and 27, Utah R. App. P., for content and format requirements. These requirements are strictly enforced and the brief may be returned pursuant to Rule 27(d). *The checklist for the briefs can be located on our website at: <http://www.utcourts.gov/courts/sup/> under "Appellate Court Checklists".*

Effective November 1, 2011, the court will begin a Type-Volume Limitation. Please closely review Rule 24(f) Utah Rules of Appellate Procedure. Specific changes include: A principal brief is acceptable if it contains no more than 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of text; and a reply brief is acceptable if it contains no more than 7,000 words or it uses a monospaced face and contains no more than 650 lines of text. Headings, footnotes and quotations count toward the word and line limitation, but the table of citations, and any addendum containing statutes, rules, regulations or portions of the record as required by paragraph (a) of this rule do not count toward the word and line limitations. Pursuant to Rule 24(f)(1)(C) Certificate of compliance, a brief submitted under Rule 24(f)(1) must include a certificate by the attorney or an unrepresented party that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word processing system used to prepare the brief. The certificate must state either the number of words in the brief or the number of lines of monospaced type in the brief.

All parties are specifically advised that the typeface requirements of Rule 27(b), Utah R. App. P., will be strictly enforced and noncomplying briefs will be rejected. A proportionally spaced typeface must be 13-point or larger for text and footnotes. A monospaced typeface may not contain more than ten characters per inch for both text and footnotes.

As a preliminary step toward electronic filing, we request that you submit your original brief without binding or staple (paperclipped is preferred). While we recognize that this is a departure from the Rules of Appellate Procedure, all other requirements under the rules are in force, including binding additional copies of the brief.

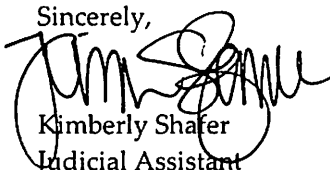
Motions for additional time to file briefs must comply with the requirements of Rules 22(b) or 26(a) of the Utah Rules of Appellate Procedure. Please note that all extension requests, other than the first one requested by each party, that are not stipulated to by the opposing party, will not be acted upon until the time for response has expired.

As of May 15, 2008, pursuant to Utah Supreme Court Standing Order No. 8, any party filing a brief on the merits in the Utah Supreme Court or the Utah Court of Appeals is required to submit a courtesy copy of the brief on compact disc (CD) in searchable PDF format in addition to complying with the filing and service requirements stated in the Utah Rules of Appellate Procedure. The CD may contain a separate electronic file of the addenda or supporting materials; however, the searchable brief must be its own file. Instructions for converting a document to searchable PDF format can be located on our website at: http://www.utcourts.gov/resources/attorney/Convenience_Brief/instructions/Save_Document-PDF.pdf. The courtesy brief must be submitted to the court and accompanied by a certificate of service no later than 14 days after the filing of the paper form of the brief. If you lack the technological capability to comply with the Standing Order No. 8, you must file a motion to be excused from compliance at the same time you file the brief.

Parties may request oral argument by so indicating at the bottom on the cover of their brief. The court will not formally respond to such requests, but will consider the same during its regular calendaring process.

Please note, failure to perfect an appeal at any time during the appeal process may result in dismissal of the appeal.

Sincerely,



Kimberly Shafer
Judicial Assistant

cc: SHAREL S. REBER sreber@utah.gov
AMANDA N MONTAGUE amontague@utah.gov